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Global Governance Programme-438

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Revocation of Citizenship:

The New Policies of Conditional Membership

Edited by Émilien Fargues and Iseult Honohan

European University Institute

Robert Schuman Centre for Advanced Studies

Global Governance Programme

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Revocation of Citizenship:

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EUI Working Paper **RSC** 2021/23

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Abstract

In many countries across the world, citizenship revocation policies are back on the political agenda. States are either contemplating or adopting legislative changes to increase the power of the executive to take citizenship away from individuals on an array of legal grounds, from fraud in the naturalisation process to involvement in terror-related acts. Amendments to citizenship legislation are also decided with the purpose of excluding entire communities from the definition of national identity and removing them out of the state borders. This symposium addresses the challenges that the revival of citizenship revocation raises for the study of citizenship as a secure and equal membership in a state. It brings together academics and practitioners in an effort to reflect both on the concrete policy implications of citizenship stripping and on its theoretical significance. The symposium also takes an original comparative perspective on this topic, with contributions that go beyond Western contexts represented in much of the citizenship literature.

Keywords

Citizenship revocation, India, Myanmar, Nigeria, Syria.

Table of Contents

Introduction*

<i>Broadening the lens on citizenship revocation and the security of citizenship</i> Iseult Honohan.....	1
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Case studies

<i>Citizenship revocation and statelessness of Kurds in Syria: Repression of Kurdish rights by Ba'athist Assad regime in Syria (1962-2011)</i> Muhamad Alh.....	5
<i>Interrogating citizenship in contemporary Nigeria</i> MaryAnne Iwara.....	12
<i>Absent citizenship: A case study of the Rohingya</i> Jasmine Burnley	18
<i>On the verge: Revocation and denial of citizenship in India</i> M. Mohsin Alam Bhat, Aashish Yadav.....	25

Comments

<i>Stolen citizenship</i> Laura van Waas	36
<i>Pathways to statelessness: Denationalisation and the denial of personhood</i> Milena Tripkovic	41
<i>Beyond the 'West': Understanding citizenship revocation in a global context</i> Émilien Fargues.....	44

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Broadening the lens on citizenship revocation and the security of citizenship

Iseult Honohan*

The value of legal citizenship is that it provides a secure status protecting its holders and making them equal members of a political community. Despite suggestions that contemporary citizenship is less important than the individual elements of the diverse bundle of rights hitherto associated with it, that it is less significant than more widely held human rights, or that it has been hollowed out by the increasing powers of states, the continuing importance of citizenship is confirmed by the case studies considered here. Citizenship is the most secure basis for an unconditional right to continuing residence in (and re-entry to) the state, and for rights to participate in national representative politics, as well as more a secure exercise of other rights. From a normative perspective, the status of citizen can be seen as essential to those who are subject to the continuing authority of a state, who need institutional protection from other groups and individuals, both within and outside the state, and from the powers of the state itself.

Provisions for involuntary loss of citizenship

The way in which the rules regulating the acquisition and loss of citizenship are asymmetric emphasises the importance of security of citizenship. The conditions under which states revoke it have tended to be more constrained than those they require for its initial acquisition.

Most states have some legal provisions for the involuntary loss of citizenship. In general these can be seen as based on two different kinds of grounds: either confirming the loss of substantial links with the country (such as by long-term residence abroad or acquiring another citizenship), or applying a penalty for specific behaviour (such as fraud in acquiring citizenship, political or other serious crimes, or disloyalty to the state or constitution). Many provisions of the second kind apply only to naturalised citizens, not to those who acquired their citizenship at birth.

While states have the right to define their own membership, there are some constraints in international law, including an individual's right not to be arbitrarily deprived of their citizenship in the Universal Declaration of Human Rights, Article 15.2. In addition, the 1961 Convention on the Reduction of Statelessness, Article 8, prohibits withdrawal if it renders a person stateless (with possible exceptions in cases of fraudulent acquisition), and Article 9 prohibits withdrawal on racial, ethnic, religious or political grounds.

While it may be not fully clear what counts as unjustifiably 'arbitrary' procedures, De Groot and Vink have suggested that these might be understood at least as those that: are not based in law, extend loss retroactively, or are based on provisions that are not easily accessible, comprehensible and predictable. Provisions should not be discriminatory, should be challengeable in court and only in cases of fraud should withdrawal be allowed to create statelessness.¹

In recent years Western states, including Netherlands, UK and Australia, have increasingly exercised and extended powers to revoke citizenship. These have largely focused on specific behaviour of individuals in carrying out or supporting terrorist activities. Some have relied on more general grounds, for example, if a person's citizenship is deemed to be prejudicial to the national interest or the public good. Those whose citizenship is revoked on these grounds are often then subject to deportation or, if abroad, excluded from the state. The numbers involved have been small but growing, and the practice may be seen as politically and normatively problematic. While states have generally observed a limit in

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¹ De Groot, G.-R. and M. Vink (2014), 'A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union', Background paper ILEC-project (project on Involuntary Loss of European Citizenship), CEPS Paper in Liberty and Security in Europe No. 75.

not making their citizens stateless, in some cases they maintain the possibility of another citizenship that is not necessarily recognised by the state in question, which risks rendering people effectively stateless. Moreover, such revocations have been criticised as discriminatory (in not treating alike native born and naturalised citizens, or dual citizens and holders of only one citizenship), as targeting particular groups, or as an inappropriate substitute for punishing crimes. More generally it may be argued that wide state powers to revoke citizenship erode the security of citizenship itself.²

What's distinctive in these case studies

In the four case studies in this symposium we see a range of different types of citizenship withdrawal beyond the Western context. These accounts, from Syria, by Mohamad Alh, from Nigeria, by MaryAnne Iwara, from Myanmar, by Jasmine Burnley, and from India, by Aashish Yadav and Mohsin Alam Bhat, along with the commentaries by that follow, by Laura van Waas, Milena Tripkovic, and Émilien Fargues, throw new light on the practice of citizenship revocation. These cases share certain distinctive features, and unlike in the more discussed Western cases mentioned above, they do not rely on the exercise or expansion of formal powers in citizenship laws.

In these cases, citizenship has been revoked from those whose (albeit disputed) citizenship derives from birth (either by descent or territory) rather than naturalisation. Many of those affected continue to be resident in the state, as opposed to being deported. These are larger scale processes of revocation, which appear to be applied to individuals on the basis of their group membership, rather than in response to specific crimes or other actions. Statelessness has not in general provided a limit to the withdrawal of citizenship.

The groups affected may be defined in ethnic (Kurds in Syria) or religious (Muslims in Assam/India) terms, or in a combination of the two (Rohingya in Myanmar). In these cases the members of the group have been characterised as outsiders, as immigrants, even as illegal immigrants or 'alien infiltrators'. While there has undoubtedly been movement across borders, these groups have had a substantial and long-standing presence in their respective countries, in the case of the Rohingya and Kurds for centuries. In Nigeria, it is in relation to the region rather than the nation-state that the Boko Haram victim returnees are defined as outsiders; they cannot establish that they are eligible for the certificate of indigeneity in that particular region, a prerequisite for citizenship.

Defining these groups as non-members has been central to this process. In two cases the mechanism has been ostensibly a determination of those properly qualified to hold the status: the Syrian exceptional Census of 1962 and the National Register of Citizens (NRC) of 2014-19 in Assam. In Myanmar the basis for deprivation was laid by new citizenship legislation in 1982, which created three tiers of citizenship that excluded those who were not members of specified 'national races' and granted a lesser status selectively to certain others.

Why might we think of these processes as more like revocation than correction of citizenship? In some cases it has been argued that what is involved is a correction: annulling the citizenship of those who were never entitled to it. But, in the first place, even in the context of continuing immigration, significant numbers of those whose citizenship was withdrawn (or their ancestors) seem to have met the legislative criteria for citizenship relevant at the time. In India from 1949 to 1986, in Nigeria from 1960 to 1979, and in Myanmar (then Burma) from 1948 up to 1982, all born in the country were deemed to be citizens from birth. Subsequently, and in Syria throughout this time, descent from a citizen was the principal basis for the award of citizenship.³ These combinations of original *ius soli* with *ius sanguinis*

² See further Honohan, I. (2020), 'Just what's wrong with losing citizenship? Examining revocation of citizenship from a non-domination perspective', *Citizenship Studies*, 24:3, 355-370, DOI: 10.1080/13621025.2019.1700045

³ In Syria this only through the father; in India since 2004, a citizen cannot pass citizenship to their child at birth if the other parent is in the category of illegal immigrant or undocumented foreigner, while since 2019 exceptions have been provided

provisions suggest that a substantial population qualified as citizens at birth, and had previously been treated as citizens in various ways (and, furthermore, did not have any other citizenship). But the NRC assessment deemed Assam to be an exception to the universal Indian *ius soli* provision up to 1986, and recognised only those born before 1971 (though this is currently subject to court judgement). Both in Assam and Syria, where descent from a citizen was the criterion, the burden of proof was on citizens themselves to provide documentary evidence under constrained circumstances. It appears that the processes were applied differentially to different groups, and the inability to provide documentary evidence, or clerical errors, led to exclusion, or selective acceptance on ethnic and religious criteria. For the many who did not succeed in establishing citizenship the processes of appeal have been limited.

In Myanmar, rather than a determination process, the basis for revocation lay in the redefined criteria for citizenship from 1982, which subsequently have been applied retroactively in a way that amounted to revoking citizenship. Retroactive withdrawal from those were previously ostensible citizens through automatic acquisition on the basis of birthplace or descent is better understood as a matter of revocation than denial.

The outcomes of revocation: statelessness and the loss of rights

In these cases the creation of statelessness has not constrained state action (though in some cases it has been suggested that those losing citizenship are the responsibility of another state with which they are historically linked). None of India, Myanmar or Syria have acceded to the 1961 Convention (with its constraints against rendering stateless, or revoking on racial, ethnic, religious or political grounds). Nigeria in 2011 acceded to the Convention, though it has yet to implement its provisions with changes in domestic law.

These revocations often have the effect of rendering citizens stateless. Even when they have not done so, those affected lose the security of citizenship in their country of residence. While revocation has been associated with deportation or exclusion for the Rohingya, for the Muslims of Assam, it has instead led to confinement in detention centres. In Syria, some Kurds have been subject to internal deportation; in each case loss of citizenship has meant limits on internal mobility as well as restrictions either on leaving or on re-entering the country, or both.

The breadth and depth of the other rights that have been lost are particularly striking. Not only political rights (e.g. the right to vote), but a whole range of basic social (identity documents, education), and economic (land ownership, employment) rights, as well as cultural rights, have been denied or subject to substantial barriers compared with their exercise by those recognised as citizens.

Conclusion

These case studies demonstrate practices of revocation of citizenship in a new range of contexts. They raise a different range of concerns from the cases controversial in the West. To the extent that they apply criteria for citizenship retroactively, discriminate among citizens on ethnic or religious lines, and offer a limited framework for appeal, they display elements of arbitrary withdrawal.

Such practices undermine the security central to the status of citizenship, whose loss is critical even when not associated with deportation, but with the loss of rights and exclusions from social, economic and cultural life. These examples highlight the way in which citizenship protects other rights, and provide strong evidence why it should be held securely.

for in the case of most non-Muslims who entered before 2014. In Myanmar, these 'national races' were already mentioned in the Constitution from 1948, but were given priority in citizenship legislation only in 1982.

On the other hand, we also see here the way in which citizenship can be subject to a process of attrition. We can identify one pattern where citizenship attribution on the basis of birth in the state is superseded by descent from a citizen, and this is further narrowed to restricted national groups; finally, citizenship is retrospectively revoked from those who are represented as failing to meet these redefined criteria for citizenship.

These cases also remind us forcefully that citizenship status is the tip of an iceberg, depending on secure documentation, of place of birth, of ancestry, of status, from birth registration onwards. While these are taken for granted in many states, their absence, whether due to administrative limitations or to restrictive access to basic identity documentation, puts citizenship at risk when the status of citizens is put in question by the state.

Even if states have the right to set the conditions for acquisition of citizenship, these cases further highlight the way in which broad state powers to revoke citizenship erode the security of citizenship itself, and confirm the need for constraints on such powers.

Citizenship revocation and statelessness of Kurds in Syria: Repression of Kurdish rights by Ba'athist Assad regime in Syria (1962-2011)

Muhamad Alh*

Introduction

Syria's Kurds comprise its largest non-Arab ethnic group. There are no official statistics that confirm their numbers; however, unofficial sources estimate them to be anywhere from one to four million out of Syria's 23 million people. The distribution of Syria's Kurds has been estimated at 50% in the Jazira and the Euphrates Region (Northeast), 40% in Aleppo Governorate (North of Syria, that includes Rural Aleppo and Afrin), and 10% for the rest of Syria, mostly in Damascus.¹ Geographically, the north-eastern Kurdish-inhabited region covers the greater part of Hassaka Governorate and Qamishli city. Other regions with significant Kurdish populations are Kobani (officially known as Ayn al-Arab) in the north and Afrin in the northwest, along the Syrian-Turkish border.

In this case study, I explain how denationalisation and the denial of rights associated with citizenship has been instrumentalised against the Kurds by political elites, parties, and the successive ruling authoritarian regimes in Syria since the 1960s. First, the study will focus on the citizenship revocation of Syrian Kurds (the loss of the status of Syrian citizen which they formerly held) as the result of the application of the decree of 1962.² Secondly, the paper will show that this measure led to the denial of citizenship to the children of stateless Kurds. Generations of Kurds were denied Syrian citizenship and automatically inherited their parents' statelessness at birth. Thirdly, I will explain how these two policies resulted in the denial of the rights associated with Syrian citizenship: electoral, educational, health and welfare rights, as well as the denial of access to public and social services.

All of these -citizenship revocation, denial of citizenship and loss of the rights associated with citizenship- have been part of policies adopted by the Syrian state and were clearly aimed at suppressing the ethnic identity of the Kurdish community. This case study starts with a short review of the historical roots of Kurd's deprived status in the Middle East region, and the political repression and violence against them. Then it highlights the process of discrimination and denationalisation of Kurds in Syria, and how policies and practices of Syrian governments since the 1960s aimed to deprive Kurds of the civil, economic, and social rights, and of their Kurdish culture and identity. It presents the past and present situation of stateless Syrian Kurds, highlighting the systematic violations and the long denial of recognition of Kurdish identity, presence and rights. It focuses on the Kurds in the North East of Syria, who have been arbitrarily denied access to Syrian citizenship.

The historical marginalisation and deprivation of Kurds

The Kurds are the world's largest ethnic group without a country, spread across the most volatile countries in the Middle East since the split of the Ottoman Empire into nation-states. Kurds have suffered deprivation, denationalisation, marginalisation, political repression and violence from authoritarian regimes in the Middle East since the 1920s (Turkey, Iraq, Syria, and Iran). After European colonialism, the repression of Kurds was driven by the emergence of various forms of nationalist

* Syrian scholar and humanitarian.

¹ Tejel, J. (2008), *Syria's Kurds: History, Politics and Society*. London and New York: Routledge. 45-50.

² Syrian nationality law of 1969 contains provisions that allow for citizenship revocation on grounds of fraud, disloyalty or threat to national security (articles 20 and 21, chapter 7 – an English version of the law is available at: <https://www.refworld.org/pdfid/4d81e7b12.pdf>). However, these provisions have not had a significant impact against the Syrian Kurds, in contrast with the 1962 census which I propose to analyse as a mechanism of citizenship revocation that has had long-lasting consequences upon them.

movement in Turkey, Syria, Iran, and Iraq, as well as the emergence of Pan-Arabism after independence. All of this meant that Kurdish sovereignty was not a priority for pan-Arab leaders in Iraq and Syria and was a great threat for Kemal Atatürk's Turkey. In Turkey, the government forcibly displaced over a million Kurds after several Kurdish revolts in the 1920s and 30s, the Kurdish language and culture were banned, and violence against the Kurdish population included torture and destruction of villages.³ In Iraq, there was widespread violence against Kurds by the Iraqi Ba'athist regime in the late 80s and early 90s (under the leadership of Saddam Hussein).⁴

Kurdish settlement in Syria goes back to the times before the Crusades of the 11th century. During the Ottoman period (1516–1922), large Kurdish tribal groups both settled in and were deported to areas of northern Syria from Anatolia. In the 1920s, after the failed Kurdish rebellions in Turkey, there was larger migration of Kurds to the Jazira area in the Northeast of Syria. It is estimated that 25,000 Kurds fled at this time to Syria. On one account these migrants constituted around 10% of the Kurds of the Jazira area at the time.⁵ All were granted citizenship by the authorities of the French Mandate for Syria and Lebanon (1923-1946). However, French government sources indicate the existence of at most 45 Kurdish villages in Jazira prior to 1927. With a new wave of refugees arrived in 1929, the French mandatory authority continued to facilitate the Kurdish immigration into Syria, and by 1939, the villages numbered between 700 and 800. Other estimates suggest⁶ that in 1953, out of the 146,000 population of Jazira, Kurds made up 60,000 (41%), nomad Arabs 50,000 (34%), and a quarter of the population were Christians.⁷

Therefore, the issue of the Kurds has been treated differently by several governments and ruling authorities and has been a historical problem during the 20th century and the current crisis of Syria. Despite the fact that Kurds have a long history and wide presence in Syria, the ruling regimes have used the fact that many Kurds fled to Syria during the 1920s to claim that Kurds are not indigenous to the country and to justify its discriminatory policies against them.⁸

In general, it has been complicated and escalated due to the Kurdish autonomist movement in the Jazira region in 1936, the 'Kurdish-Christian bloc', during the French mandate, as well as the separatist efforts by Kurds and different minorities in Syria during the 1930s.⁹ According to many Syrian and Kurdish scholars,¹⁰ this is mainly the consequence of the borders of modern Syria determined by the Sykes-Picot Agreement (1916), and the settlement of the Syrian Kurds between France and Turkey through the Treaty of Sèvres. However, after the independence of Syria in 1945 and considerable settlement in the region, the problem of nationality and recognition of the Kurdish minority took a new turn in 1962, when a statute was established according to Legislative Decree No. (93) issued by the government of the Ba'athist regime, that ordered a census of the population in Jazira (North East of Syria). The Jazira census of 1962 was an exceptional census.¹¹ The decree stressed that Kurds in northern

³ Arin, K. Y. (2015), *Turkey and the Kurds – From war to reconciliation?* UC Berkeley Center for Right Wing Studies Working Paper Series.

⁴ Smith, B. (2010), *Land, History and Separatist Conflict: The Origins of National Rebellion in the Post-Colonial World*. APSA 2010 Annual Meeting Paper.

⁵ Kreyenbroek, P. G. and S. Sperl (1992), *The Kurds: A Contemporary Overview*. London: Routledge. 147.

⁶ Fevret, M. and A. Gibert (1953), 'La Djezireh syrienne et son réveil économique'. [*'The Syrian Jazireh and its economic awakening'*. *Lyon geography review*]. *Revue de géographie de Lyon* (28): 1–15.

⁷ Tejel, J. (2008), *Syria's Kurds: History, Politics and Society*. London and New York: Routledge. 40-45.

⁸ Human Rights Watch (1996). *Syria: The Silenced Kurds*. <https://www.hrw.org/sites/default/files/reports/SYRIA96.pdf>, 9-10.

⁹ Radpey, L (2016), 'Kurdish regional self-rule administration in Syria: A new model of statehood and its status in international law compared to the Kurdistan Regional Government (KRG) in Iraq', *Japanese Journal of Political Science* 17(3): 468–488.

¹⁰ *Ibid.*

¹¹ Albarazi, Z. (2013), *The Stateless Syrians*. Tilburg Law School Research Paper No. 011/2013.

areas of Syria had to prove that they had lived there since at least 1945, or the Syrian government would not include them in the registry and grant them citizenship.

Deliberately, the way in which the decree was implemented indicates that this special census was carried out in an arbitrary and ad hoc manner. The government conducted the census in only one day, for all residents of the north and northeast of the country to gather the necessary information of the Kurds of Syria. This meant that if an individual was not available that day, they were not included in the registry process. Additionally, to be registered and included, each individual was obligated to bring a list of documents on the day, that proved his/her residence in Syria in 1945. The results of this inspection were to be submitted to the central committee to confirm or reject the entry. All of these stringent requirements increased the obstacles to keeping their nationality that many Kurdish families faced, and others were forced to pay large bribes to retain it. Many reported testimonies stated that decisions to register were made arbitrarily by the local officials and state employees.¹²

As a result, an estimated 120,000 people, or about 20 percent of Syrian Kurds, had their citizenship revoked.¹³ As a result, thousands of Kurds in the North-eastern areas who had lived in Syria for hundreds of years before the date specified in the law were now no longer citizens in their own country. Because this was an arbitrary strategy and approach, Kurds of Al-Jazira were classified differently, and this resulted in the division of the Kurds in Syria into three groups.¹⁴

- Kurds with Syrian citizenship.
- Two categories who lost their citizenship and became stateless:
 - a) Kurds registered by the Syrian authorities as ‘foreigners of Al-Hassaka’ or ‘aliens’ (*ajanib*). These were provided with a simple white piece of paper that read “His name was not on the registration lists of Syrian Arabs specific to Hassaka”.¹⁵
 - b) Those who refused to participate in the census and were categorised as ‘unregistered’ (*maktoum*).¹⁶ These were granted fewer rights than the ‘foreigners’, including a very limited access to public services, such as education and health.

All of these problems led to situations in which fathers were classified as ‘foreigners of Al-Hassaka’ while their sons remained citizens, and many of those stripped of citizenship had relatives who retained their Syrian citizenship. According to Syrian-Kurdish activists,¹⁷ Kurds from the same family and Syrian village lost their citizenship as a result of the census and became ‘foreigners’. According to a Human Rights Watch (HRW) report of 1996, the Syrian government clarified that the purpose of this census was identifying so-called “alien infiltrators”, and discovering how many people had illegally migrated to Syria through the borders from the Turkish Kurdistan region.¹⁸ In particular, the Syrian government’s argument in stripping the Syrian Kurds of their citizenship was that they were of Turkish origin, and had immigrated to Syria due to the Kurdish revolutions in Turkey at that time. In truth, however, as noted above, this was not the case.

¹² Vanly, I. C. (1992), ‘The Kurds in Syria and Lebanon’, in Kreyenbroek, P.G. and S. Sperl (eds.), *The Kurds: A Contemporary Overview*, 151-152. London and New York: Routledge.

¹³ Tejel, J. (2008), *Syria’s Kurds: History, Politics and Society*. London and New York: Routledge: 50-55.

¹⁴ Refugees International (2006), *Buried Alive: Stateless Kurds in Syria*. <https://www.refworld.org/pdfid/47a6eba80.pdf>.

¹⁵ Human Rights Watch (1996), *Syria: The Silenced Kurds*. <https://www.hrw.org/sites/default/files/reports/SYRIA96.pdf>, 15.

¹⁶ This was the Syrian administrative term used by the Syrian authorities in official population and civil registers to indicate the absence of the person as ‘unregistered’ in the governmental records. The word is used to refer to a discrete group of stateless Syrian Kurds, and means hidden, concealed, suppressed; kept secret or undisclosed.

¹⁷ Zoom interview with a Kurdish activist in Al-Raqa (North of Syria), 18/04/2020.

¹⁸ Human Rights Watch (1996), *Syria: The Silenced Kurds*. <https://www.hrw.org/sites/default/files/reports/SYRIA96.pdf>, 21.

Discrimination and Arabisation policies

Several governmental discriminatory strategies and forms of marginalisation affected the Kurds after the 1962 census. The denial of the rights associated with Syrian citizenship (including political rights) as well as the denial of a series of civil rights (including the rights to access property and education) followed the citizenship revocation of the Syrian Kurds. These discriminations should be seen as part of a more comprehensive policy to arabise the resource-rich north and north-eastern areas of Syria, which have the largest concentration of non-Arab groups in the country. In line with pan-Arab ideology politics and nationalisations during the 1960s-1970s, Syria's constitutional declaration as an Arab Republic confirmed the ethnic foundations on which the country was to be established. This first assertion of Syria as an Arab state marks the starting point of tensions between the Syrian state and the Kurdish community.

Over this period, after the Ba'athists took power in 1963, the Syrian government denied Kurds their civil rights, property and identity rights, by i) displacing them from their lands in the north-east to the interior; ii) denying them education and Kurdish culture, and iii) handing over 'wanted' Kurdish activists to Turkey. Contrary to those Kurds who kept their Syrian citizenship after the 1962 census and who were progressively integrated into Syrian society, the Kurds who lost their citizenship were dispossessed of their lands, which were given by the state to Arab and Assyrian settlers. During the 1960s, all of these coincided with the beginning of Barzani's uprising in Iraqi Kurdistan and the discovery of oilfields in the Kurdish inhabited areas of Syria.¹⁹ As a result, in June 1963, Syria took part in the Iraqi military campaign against the Kurds by providing aircraft, armoured vehicles and a force of 6,000 soldiers. Most importantly, several media campaigns were launched against the Kurds with slogans such as "Save Arabism in Jazira" and "Fight the Kurdish Menace".²⁰ Since then, the Jazira's Kurds have been plagued by persecution and marginalisation from the Syrian regime and regarded as an obstacle to the Arabisation of the region.²¹

Overall, these practices included: the colonisation of Kurdish lands by Arabs, the deportation of Kurds from this area, and the prohibition for the Kurds to own property, to repair a crumbling house or to build a new one. Following that, Assad's regime denied Kurds the right to vote, elections or participation at district levels, and prohibited the teaching of the Kurdish language. All in all, these restrictions were part of a larger strategy of demographic change and systematic persecution against the Kurds in Syria.²² This strategy in the 1970s led to Arabs resettling in majority Kurdish areas, as the Syrian government decided to create an 'Arab belt' in the Jazira region along the Turkish border. After this, the Arabisation process and practices expanded in 1973, as almost 4,000 Arab families were settled in Kurdish regions. Their own Kurdish names were arabicised, and they have been treated in a discriminatory manner in their land of birth for decades.

Consequences of statelessness and intergenerational vulnerabilities

Since the census of 1962, the statelessness of Kurds of Hassaka has been a way of life for two generations of Syrian Kurds. They have been deprived of the right to register marriages and births, and with the absence of official identity documents and equal recognition as Syrian citizens, stateless Kurdish children have lived with difficulties accessing schools, universities, and vocational education, and have as a result not been able to obtain recognised qualifications. For generations, the statelessness

¹⁹ Tejel, J. (2008), *Syria's Kurds: History, Politics and Society*. London and New York: Routledge.

²⁰ *Ibid.*, 52.

²¹ Vanly, I. C. (1992), *The Kurds in Syria and Lebanon*, in Kreyenbroek, P.G. and S. Sperl (eds.), *The Kurds: A Contemporary Overview*, 157-161. London and New York: Routledge.

²² Tejel, J. (2008), *Syria's Kurds: History, Politics and Society*. London and New York: Routledge. 48-55.

and marginalisation of those groups of Kurdish had been passed on to their children, resulting in multiple generations of stateless people.

As Syrian mothers cannot pass on their nationality to their children on an equal basis with fathers,²³ the lack of access to civil registration and barriers to registering vital civil status have increased the number of stateless Kurds. As a result of natural population growth, the number of stateless Kurds (both foreigners and *Maktoums*) reached at least 300,000 by 2011,²⁴ representing around 15% of the Syrian-Kurdish population. Other estimates by local Kurdish civil groups say that there were more like 500,000 Kurdish non-citizens in Syria. According to several Syrian NGOs,²⁵ those with stateless status were registered with the local administration offices in the neighbourhoods and cities of the governorate and were given only a document proving their affiliation with the category of ‘foreigners of Al-Hassaka’ or ‘unregistered’.²⁶

As children inherit their statuses from their parents, over time Kurdish stateless families lost all civil rights, including identity, health, education, work, property and land ownership, and access to basic services. These injustices against Kurdish identity were a milestone in the history of the relationship between the ruling regime in Damascus and the Kurds in the north and northeast of the country. As a result of the economic and social exclusion of the first generation, the very restrictive ethnic approach and racial discrimination policies continued severely on the families of stateless Kurds of Jazira, and several forms of suffering and discrimination were imposed, including: inability to access other livelihoods, labour and job opportunities, prohibitions of Kurdish festivities and traditional clothes, and restrictions on internal travel to other Syrian provinces or governorates, as well as denial of passports and internationally recognised travel documents.

Due to the high birth rate of Kurdish families, the number of ‘unregistered’ has grown rapidly over the years. Despite the limited figures and information on the ‘unregistered’, the situation of this group has been even more tenuous than the ‘foreigners’, because they are denied identity cards, are not listed in official population registers, and have no access to any services or civil rights. According to documents shared by HRW in 1996, two European embassies estimated the number of ‘unregistered’ at 22,000 in 1994. But it appeared that the number was significantly higher. According to HRW, the Syrian government indicated that, in addition to the Kurds classified as ‘foreigners’, more aliens infiltrated into Syria after the 1962 official census. As stated in the report, the Syrian government answered that: “No census of these persons has been conducted, but their number was estimated to be approximately 60,000 in 1985 and has risen to about 75,000 in 1995.”²⁷

Among stateless Kurds (both ‘foreigners’ and ‘unregistered’), the next generations faced even more severe challenges during the 1980s and 1990s. More severely on livelihoods and economic rights, under the Assad regime, Kurds were not allowed to work as taxi drivers - as they could not get a driving license. As they had less freedom of movement to travel within Syria, stateless Kurds faced problems with finding jobs, applying to grants or assistances, and owning a business. Importantly, stateless Kurds were not allowed to own houses under their own names. The ‘foreigners’ were allowed to travel or could pay bribes to get access to some public services (hospital and schools), but were not allowed to work in restaurants and hotels, or entitled to rent homes, apartments and hotel rooms in any provinces.

²³ Legislative Decree 276 - Nationality Law [Syrian Arab Republic], Legislative Decree 276, 24 November 1969, available at: <https://www.refworld.org/docid/4d81e7b12.html> [accessed 29 September 2020]

²⁴ Rudaw (2011), *Documentary on the Non-Citizens Kurds of Syria*. Available at: <https://bit.ly/3iEuDIC>

²⁵ For more details and testimonials, please see: Syrians for Truth and Justice (2019), ‘Al-Hasakah Census 1962’. Available at: <https://stj-sy.org/en/tag/al-Hasakah-Census-1962/>

²⁶ Syrians for Truth and Justice (2018), ‘Syrian Citizenship Disappeared: How the 1962 Census destroyed stateless Kurds’ lives and identities’, 7. Available at: <https://www.stj-sy.com/en/view/745>. This report gives a detailed background to the political situation in Syria prior to the 1962 census.

²⁷ Human Rights Watch (1996), *Syria: The Silenced Kurds*, <https://www.hrw.org/sites/default/files/reports/SYRIA96.pdf>, 35.

However, since the 1990s ‘foreigners’ started to have a ‘red card’ – an identification document specifically tailored for this Kurdish population, while ‘unregistered’ Kurds held a document issued by the local councils to function as an identity proof. During this period, the Syrian regime had allowed children who are ‘unregistered’ to be admitted to primary schools after getting an approval from the Political Security division (one of Syria's internal security forces), this process obliges parents to go to police area office, as well as attending an investigation at the security apparatus of Al-Hassaka, then to the birth registration office, just to register for first grade.²⁸

Over the period of the 1990s and 2000s, because of an urban-centred economic strategy, the tensions at local levels evolved dramatically to govern the course of the relationships between the Damascus government and Kurdish groups. According to local sources reported by Human Rights Watch²⁹ and locally circulated, many testimonies of the Syrian Kurds deprived of Syrian nationality indicate the extent of the national, economic, social and cultural violations that they are exposed to by successive authorities in Syria.

Developments and access to citizenship

Considering the growing marginalisation and vulnerabilities among the Kurds of Syria over the past decades, protests and turmoil have been growing in many Kurdish regions, Damascus, and Aleppo, that coincided with assassinations and arrests among Kurdish community leaders and activists. Starting from 1998, the quiescence of the Kurds began changing due to the relaxed atmospheres of the ‘Damascus Spring’ and the demands for reform efforts in the whole of Syria. This further emboldened new Kurdish political movements for equality in political and cultural rights. With the current president Bashar Al-Assad taking office in 2000, the hopes around the dilemma of Kurds were renewed.

However, this quickly changed and Syrian security services soon began harassing and arresting Kurdish leaders. Accordingly, in 2004, Syria experienced one of the greatest periods of unrest in the Kurdish-populated areas of Eastern Syria, rooted in the continued struggle, discrimination and denial of citizenship rights to thousands of Kurds.³⁰ As a result, since 2005, the official authorities in Syria have made a series of pledges and promises to solve the problem of the citizenship of Kurds, whose numbers have doubled in recent periods. Then in 2008, the government of the Syrian regime issued a decision: that was to grant the status of ‘foreigner’ to everyone born from a father who is without citizenship and a mother who holds Syrian citizenship. Before this decision, in the Kurdish context, many Kurds children of stateless fathers and national mothers could not regulate their status through their mothers and became unregistered. For instance, if a male foreigner married a woman with Syrian nationality, their children could not be registered at all, as Syrian women do not enjoy the right to pass on her nationality to their children.³¹

In 2010, the total number of reported Kurds denied Syrian citizenship between 1962 and 2010 reached more than 517,000.³² Importantly, this statistic does not include the stateless Kurdish emigrants to European countries or Turkey between 1962 and 2011. As a result of the Syrian uprising that started in 2011, with the outbreak of protests in both Damascus and Kurdish areas in the North East of Syria, the Ba’athist regime announced the formation of a committee to study the implementation of recommendations to solve the 1962 census problem in the northern provinces.

²⁸ *Ibid.*, 22.

²⁹ *Idem.* See also: Minority Rights (2018), *Kurds of Syria*, <https://minorityrights.org/minorities/kurds-5/>

³⁰ Tejel, J. (2008), ‘The Qamishli revolt, 2004: the marker of a new era for Kurds in Syria’, in Tejel, J., *Syria's Kurds: History, Politics and Society*, 108–132. New York: Routledge.

³¹ Article 10 of the Syrian Nationality Law 37 Chapter Seven of the Syrian Nationality Law.

³² Daraj Blog (2018), ‘Maktoums... Syrian Kurds strangers in their country’ (in Arabic). Available at: <https://daraj.com/10523/>

Accordingly, President Bashar Al-Assad issued Legislative Decree No. 49 on April 7, 2011, which stipulated granting citizenship to those registered as ‘foreigners’. Considering that up to 2011 the number of persons categorised as ‘foreigners’ amounted to 346,242, and around 171,300 as unregistered, this legislation has changed the whole status of stateless Kurds.³³ Firstly, most of the ‘unregistered’ were able to get citizenship after managing to get registration as foreigners first. As a result, during 2011, about 50,400 Syrian stateless Kurds were able to obtain citizenship, identity cards and travel documents. In 2013, according to UNHCR, around 104,000 stateless individuals had acquired citizenship.³⁴ By the end of May 2018, 326,489 had obtained Syrian citizenship, according to Syrians for Truth and Justice Organisation. However, there are about 41,000 who did not correct their legal status due to problems encountered by the local directorates during the entry of their files in the category of ‘foreigners’.³⁵ Due to the outbreak of clashes in different areas of Syria, there are still up to 5,000 people who did not come, or were unable to correct their legal status, or likely to have emigrated or been displaced to Lebanon, Jordan, Europe, Kurdistan, and Turkey.

Conclusion

Comparing the Syrian Kurdish case to other contexts, it is worth mentioning the growing trends and patterns in citizenship revocation and denationalisation in many European countries. Between 2014 and 2019, in several European states, including Italy, Austria, Belgium, the Netherlands, and Denmark, many proposals and new legislations have been introduced to meet common domestic concerns about national security regarding ‘foreign fighters’ and suspected ‘terrorists’, through the power to revoke the citizenship of citizens and, in particular, citizens of migrant origin.³⁶ In contrast to the case of Syria, the European denationalisation practices have been a clear policy response or instrument, in line with the expansion of state security measures to prevent terrorist acts. In Syria, denationalisation has been used as an instrument, practice and policy for regime security for authoritarian regimes. Given the rise of several strong Kurdish political movements in Iraq and Turkey in the 20th century, Syria’s regime has successfully bought off, infiltrated and coerced notably weak and ineffective Kurdish opposition groups. This authoritarian approach has been driven by the threat posed by all Kurds to the ‘Arab nation’ slogan of Assad’s regime and Ba’athist Party, taking into the long and bloody struggle between Kurds and other governments in Iraq and Turkey. All of these contributed to making sustained and meaningful Kurdish political organisation extremely difficult and hazardous. However, Kurds were one of the key sources and enablers of the Syrian Uprising in 2011, and from 2012, Kurdish parties and groups started to demand secession from Syria. As the Syrian conflict turned into a proxy war, things have partially improved for the Kurds after the local Kurdish-led Autonomous Administration (AA) succeeded in getting the power and rule large parts of the northeast of Syria, which is now an internationally-accepted administration and de-facto autonomous by the American-supported Kurdish forces and Kurdish-led Syrian Democratic Council (SDC)

³³ Skype interview with UK-based Syrian-Kurdish activist, August 2020.

³⁴ UNHCR (2015), *Global Trends*. <http://www.unhcr.org/globaltrends-2015.html>.

³⁵ Asharq, A. (2018), ‘Over 19,000 Syrian Kurds Deprived of Citizenship, 46,000 Remain Stateless’. Available at: <https://english.aawsat.com/home/article/1393276/over-19000-syrian-kurds-deprived-citizenship-46000-remain-stateless>

³⁶ Birnie, R. & R. Bauböck (2020), ‘Introduction: Expulsion and Citizenship in the 21st Century’, *Citizenship Studies* 24(3): 265-276.

Interrogating citizenship in contemporary Nigeria

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The 1999 Nigerian constitution regulates tracks to attaining citizenship and the rights associated with it. It has limited provisions for revoking citizenship, and these have rarely been used. However, citizenship appears to have been abrogated in particular by the indigeneity principle, which leads to some Nigerians being denied either the status or benefits of citizenship in different spheres of life. This contribution discusses citizenship, indigeneity and statelessness in contemporary Nigeria, and in its two case studies, exposes some inconsistencies and weaknesses in the application of citizenship status and rights. The returnees from abduction by the Boko Haram have suffered the loss of rights associated with citizenship in regions where they are treated as non-indigenous, and the citizenship status of Nigerians in the Bakassi Peninsula has been rendered uncertain and insecure since the area was ceded to Cameroon. The contribution reviews the application and practicability of Nigerian law on citizenship revocation, in tandem with international human rights provisions and in context of Nigeria's ethnic, linguistic and territorial heterogeneity.

Introduction

Nigeria is Africa's most populous country with an estimated 200 million people. It is also extremely diverse, with over 250 ethnic groups and 500 languages, and is administered through a system of 36 states. Each of these states has its own ethnic and religious composition. Nigerian citizenship acquisition is mainly regulated by the 1999 Constitution¹ in Sections 25, 26, 27 and 28, which provides that citizenship can only be acquired through three legal pathways: through blood relations – parents or grandparents who belong to a community indigenous to Nigeria, registration – as a foreign woman married to a Nigerian man, and lastly through naturalisation. In spite of the provisions of citizenship and the rights accrued to citizenship, many Nigerians with formal statuses of citizenship are still refused rights of citizenship e.g. political participation, education, access to land, employment, welfare or similar, either as individuals or groups. Some are at risk of being denied citizenship and this is further amplified by local indigeneity laws.

The supremacy of national citizenship has been circumvented by identity and labelling laws, in the form of indigeneity laws. According to Chapters Three and Four of the 1999 Nigerian Constitution (as amended), the 36 states must secure full resident rights for every citizen. By this, it prohibits discrimination based on place of origin, sex, religion, ethnic association and encourages inter-marriages alike. However, the reality is different, as the indigene principle allocates power and resources to certain groups or individuals in states or Local Government Areas (LGAs), while others who have migrated for different reasons are excluded. This gives rise both to grievances and fierce political competition, which too often lead to violence. David Ehrhardt lists the negative effects of indigeneship to include weakening the uniformity of Nigerian citizenship; politicising ethnic and religious identities; marginalising Nigeria's minority ethnic groups; increasing discrimination of ethnic and religious 'non-indigenes' and even causing ethnic and religious conflicts.²

The causes of statelessness, where a person is not considered a national by any state, are numerous, including discrimination (e.g., on the basis of gender, ethnicity, religion), conflicts between and gaps in

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¹ The 1999 Constitution of the Federal Republic of Nigeria is available at: http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/nigeria/nigeri-e.htm

² Ehrhardt, D. (2017), 'Indigeneship, bureaucratic discretion, and institutional change in Northern Nigeria', *African Affairs* 116/464: 462-483.

nationality laws, lack of birth registration and state succession.³ The risk factors associated with the indigeneity principle have the propensity to approximate statelessness, though in the legal sense, only non-citizens can be stateless. Nonetheless, North-East Nigeria, in the last ten years has been a theatre of insurgency and violent conflict, spilling over into neighbouring counties. According to the United Nations (UN), there are 244,000 Nigerian refugees, over two million internally displaced and over 550,000 internally displaced persons in Cameroon, Chad and Niger.⁴ This rising complex humanitarian emergency in the three countries, including Nigeria, has great implications for how people could become stateless. Additionally, the challenges of ensuring right documentation and data transparency in terms of numbers for humanitarian support and reintegration, further puts these victims more at risk of being denied the rights associated with citizenship.

The two case studies are, first, the discrimination of returnee women and children, who were abducted and sexually violated by the Boko Haram sect and returned to their communities following recapturing and rehabilitation by state actors and, second, Nigerians in the Bakassi Peninsula. The first case highlights the discrimination experienced by these Nigerian citizens by local government officials and district heads who have unfettered discretion to exercise their authority on issuing certificates of indigeneity however they see fit. Seeing that non-indigenes usually have less access to employment, education, political participation, and in some places to land, these returnees are in-turn faced with the deprivation of rights associated with citizenship and the ability to economically earn a living and provide for their families. The second case, Nigerians in the Bakassi Peninsula, discusses citizenship and statelessness in the legal sense. Following the 2002 ruling of the International Court of Justice (ICJ) and due to the dissolution of the former Nigerian territory and its cession to Cameroon, almost 300,000 persons are at risk of statelessness, therefore increasing the number of cases of people who are uncertain about their Nigerian citizenship.⁵

Nigeria has ratified international conventions and protocols related to ensuring citizenship as a status to eligible persons, providing citizenship rights and ending statelessness, as well as incorporated these into domestic law. However, while Nigeria as a result is bound to tackle discrimination in the area of citizenship law, the two case studies presented bring to the fore a different reality.

It is worth noting, at this juncture, that this short intervention is essential for at least two compelling reasons. First, in bridging specific theoretical, conceptual and legal gaps in citizenship studies, it is important to relate them to practice and reality. This is particularly applicable to the case studies presented in the paper. Both cases are real life practices that occur within Nigerian society. However, the apparent lack of adequate attention to these issues has led to the inability of relevant actors to grasp and provide adequate policy intervention even when they occur in observable daily activities. In Nigeria, where poverty, unemployment and violent conflict have become widespread, both cases highlight how citizenship laws are punctuated by primordial laws and a fluid application of international rulings. Second, a review of administrative practices highlights obstacles such as the proof of indigeneity as in the case of the returnee women and children and the lack of birth/residence certificates in the case of the people living on the Bakassi Peninsula. These practices underpin the crucial role of local government administration for national citizenship governance.

³ UNHCR, 'What is statelessness?' <https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf>

⁴ UNHCR, 'Nigeria Emergency', <https://www.unhcr.org/nigeria-emergency.html>

⁵ Anyu, J. N. (2007), 'The International Court of Justice and border-conflict resolution in Africa: The Bakassi Peninsula conflict', *Mediterranean Quarterly* 18(3): 39–55.

Understanding citizenship, citizenship revocation, indigeneity and statelessness in Nigeria

For the purpose of understanding citizenship, citizenship revocation, indigeneity and statelessness, within the context of Nigeria, it is important to clarify these concepts in order to put the analysis in proper perspective.

Citizenship

In contemporary times, the concept of citizenship in Nigeria has gained heightened prominence both as a vector for socio-economic development and as a catalyst of socio-political cohesion in a heterogeneous and polarised society. Citizenship as a conjunction of obligations, rights and privileges⁶ that are equally accruable to individuals, based on their identity within a particular state or community, has been contested, not just by political elites, but also by members of the society.

The history of legal repository of citizenship status, rights and privileges in Nigeria lies in its Constitutions. Before independence, citizenship status in colonial Nigeria depended on distinctions between ‘natives’ and ‘non-natives’, British protected persons, citizens of the United Kingdom and its colonies. The attendant rights and privileges accrued to these persons was also dependent on their membership in any of these categories. Following independence in 1960, citizenship was provided for every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria.⁷ The most recent 1999 Constitution (as amended) provides three tracks to citizenship, namely through birth to a citizen parent (or grandparent), marriage to a citizen, and discretionary naturalisation on the basis of 15 years residence and other conditions, including good character.⁸

Citizenship revocation

The current legal basis for citizenship revocation or withdrawal in Nigeria lies in its 1999 Constitution (as amended). Accordingly, citizenship revocation is only applicable to naturalised citizens whom the president deems disloyal, or who have committed a crime and have been imprisoned for three years or more.⁹ Though the cases of citizenship revocation in Nigeria are few and far between, it remains a concern why a status very cumbersome to acquire will be very easy to revoke through a presidential decree. While punishment for crimes are within the jurisdiction of a criminal court, revocation of citizenship of naturalised citizens should not be an added punitive measure. The mechanisms for revocation should therefore be reviewed and citizens should be treated equally, irrespective of how they have acquired citizenship.

Indigeneity or indigene principle

In every state and LGA of Nigeria, the population is divided into ‘indigene’ and ‘non-indigene’ citizens, or into ‘host’ and ‘settler’ communities. These persons who have lived together in the same place for many years, differ primarily in terms of ethnicity and language. Though indigenes claim to be the

⁶ Purvis, T. & A. Hunt (1999), ‘Identity versus citizenship: transformations in the discourses and practices of citizenship’, *Social and Legal Studies* 8(4): 457–82.

⁷ Manby, B. (2018), ‘Who is a Native?’, in B. Manby, *Citizenship in Africa: the law of belonging*, 147–258. Oxford: Hart Publishing.

⁸ The 1999 Constitution of the Federal Republic of Nigeria 1999 Articles 25-27. Source: <https://globalcit.eu/acquisition-citizenship/>

⁹ In addition, the citizenship of a naturalised citizen lapses automatically if another citizenship is acquired. The 1999 Constitution of the Federal Republic of Nigeria Articles 28-30. Source: <http://globalcit.eu/loss-of-citizenship>.

original inhabitants of a place, this claim is often fraught with contestation and lack of evidence. Moreover, the indigeneity principle privileges the host community with control of power and resources and often excludes migrant settlers; as a result, tensions rise over identity and resource control.

Moreover, local governments and district heads issue ‘certificates of indigeneity’ to people who are indigenes of their jurisdictions. These certificates serve as documentary proof that the bearer is an indigene of the LGA, and possession of the certificate is the only proof of indigeneity. Indigeneity is also another way of delegating Nigeria’s citizenship management to the discretion of a LGA, primarily to determine who gets what; therefore, anyone without an indigeneity certificate could be treated as a non-indigene in their formal interactions with all levels and benefits from government. The unfettered local discretion through the proof of indigeneity thereby determines one’s citizenship rights, obligations and privileges as an indigene or non-indigene.¹⁰ Though indigeneity is not yet established as a clear, legal and procedural framework to determine the legal status of citizenship, it has organically evolved as an identification system where citizenship depends on and derives its authentication by a local government authority rather than a federal agency. While this system is without specific legal authority, it reflects the requirement for membership of an ‘indigenous community’ as the foundation of citizenship,¹¹ therefore, making indigeneity a distinctive feature of Nigeria’s citizenship.

Statelessness

According to the United Nations High Commissioner for Refugees (UNHCR), a stateless person is not considered as a national by any state under the operation of its law.¹² The consequences of statelessness include continual denials of peoples’ fundamental rights, economic rights, political participation, social and education rights, among others. This occurs for several reasons, including discrimination against particular ethnic or religious groups, or on the basis of gender; the emergence of new states and transfers of territory between existing states; and gaps in nationality laws.¹³ Nigeria is a signatory to many international instruments like the 1954 Convention related to the status of Stateless Persons and the 1961 Convention on the reduction of Statelessness and has drafted a National Action Plan (NAP) to eradicate statelessness in the country.¹⁴ One notable proposal of the NAP is to formally create a path towards citizenships for children of refugees born in the country through proper documentation. Yet for some Nigerian citizens, citizenship has not been securely held.

Case studies

North-East returnee women, girls and children

This brief case study presents experiences by returnee women, girls and children in post-conflict and no-peace-no-war communities ravaged by Boko Haram activities in North-East Nigeria, and how indigene certificates are denied these returnees based on perceptions of their involvement with the insurgents. Following the current recapturing and reintegration programmes conducted by the Nigerian government and other actors, most of the returnee women and children born through sexual relationships with members of the sect are faced with stigmatisation, suspicion, marginalisation, and rejection by

¹⁰ Manby, B. (2018), ‘Who is a Native?’, in B. Manby, *Citizenship in Africa: the Law of belonging*, 147–258. Oxford: Hart Publishing.

¹¹ *Ibid.*

¹² UNHCR (2005). *Nationality and statelessness: A handbook for parliamentarians*, 3.

¹³ *Ibid.*

¹⁴ ‘Communique on statelessness’, http://citizenshiprightsafrika.org/wp-content/uploads/2019/01/UNHCRNigeria_Communique-Statelessness_Dec2018.pdf

family and community members due to cultural and social norms, including perceptions of their role in the conflict. The children are even called ‘bad blood’ and further rejected within their immediate community.¹⁵ It is worth noting that these returnee women are legally Nigerian citizens, and going by this citizenship status, their children are automatically conferred with Nigerian citizenship.¹⁶ However, the proof of indigeneity, which is the instrument that determines their access to allocation and distribution of citizenship rights as determined by local government administrators and district heads are often refused, and this is fundamentally tied to these erroneous perceptions. As a result, the returnees cannot access practical support for inclusion and reintegration from the lack of documentation and are consequently denied the rights normally associated with Nigerian citizenship. The upshot of this is that the children are at-risk towards re-radicalisation, while their mothers are forced into prostitution and other crimes.

Bakassi returnees

The Bakassi Peninsula is an oil-rich territory located on the Gulf of Guinea and stretches across a geographical territory of approximately 1,800 square kilometres. Geophysical surveys have revealed that the peninsula is rich in petroleum deposits and holds “about ten percent of the world’s oil and gas reserves.”¹⁷ Until 2002, the territorial sovereignty of Bakassi lay within Nigeria, but had been contested, as both Cameroon and Nigeria lay competing claims to the territory. Following an ICJ ruling,¹⁸ the boundary and sovereignty of Bakassi was ordered to lie with Cameroon, thereby denying Nigeria the intrinsic geographical and economic benefits of the peninsula. The peninsula was mainly populated by Nigerians, before the advent of colonialism, who depend solely on the rich aquatic resource as means of livelihood being mainly fishermen, boat-makers and marine transporters.¹⁹ Though the ICJ judgment required transfer of territory and sovereignty, it did not compel the inhabitants to move or change their nationality. It was, however, not made fully clear whether and how they could acquire Cameroonian citizenship, or were to retain Nigerian citizenship.²⁰ In the face of this ruling, the 300,000 population of the Peninsula were affected and subjected to forced migration from their ancestral abode following the cession, and also as a result of the hostility experienced from Cameroon military.²¹ While the majority of them moved and became displaced within Nigeria, the exact number of persons who remained on the Peninsula or accessed Cameroonian citizenship is unknown due to the informal birth, death and residence registers that exist within rural areas. Without specific guidance, the application of the ruling lacked clarity, as thousands of Nigerians in the Peninsula are at risk of being stateless, though many wanted to remain Nigerians since they had more social and economic ties with Nigeria. The clear absence of a citizenship approach to this international dispute resolution by ICJ not only stripped substantial number of persons living on the peninsula of their rights but disrupted and deprived them of their sources of livelihood. In this case, citizenship status was either lost or became uncertain for significant numbers of former Nigerian citizens, all without any formal process of citizenship revocation.

¹⁵ UNICEF, (2017) ‘Report: Bad blood’, <https://www.unicef.org/wca/reports/bad-blood>

¹⁶ The 1999 Constitution of the Federal Republic of Nigeria. Chapter 3 Section 25.1.b

¹⁷ Anyu, J.N. (2007), ‘The International Court of Justice and border-conflict resolution in Africa: The Bakassi Peninsula conflict’, *Mediterranean Quarterly* 18(3): 39–55.

¹⁸ *Ibid.*

¹⁹ Adigbuo, E. R. (2019), ‘Role conflicts in foreign policy: Nigeria’s dilemma over Bakassi Peninsula’, *Journal of Contemporary African Studies* 37(4): 404-420.

²⁰ Manby, B. & S. Momoh (2020), *Report on citizenship law : Nigeria*, Florence, GLOBALCIT Country Reports. Retrieved from Cadmus, European University Institute Research Repository, at: <https://hdl.handle.net/1814/67855>

²¹ Unah, L. (2019), ‘The lifelong consequences of a little known Nigeria-Cameroon land dispute,’ TRTWORLD, <https://www.trtworld.com/magazine/the-lifelong-consequences-of-a-little-known-nigeria-cameroon-land-dispute-26701>

Discussion

At the centre of issues related to citizenship management in Nigeria is identity politics, one of the most contested issues in current societies.²² We speak of identity politics when the identity of a person or group becomes prominent or asserted in the interaction between the plural nature of the society (ethnicity, culture, religion) and the competition for political, economic and other resources. In Nigeria, the politics of identity has increased the tension between identity and citizenship management. Furthermore, prior to the delineation of the country into regions, attainment of independence and division of regions into states, citizen rights as distributed by colonialism were also based on this identity and affiliation. These practices have directly or implicitly been accentuated by colonial history, reiterated in different constitutions and practiced by local authorities.

Though statelessness is often regarded as an invisible problem, in Nigeria, cases or incidents of statelessness exist, though not in high or visible records. This could be attributed to the absence of data, in the sense that population data is not updated and often politicized. Also, the on-going conflict in the North-East, including the instability in other regions, accounts for the poor and limited data.

According to Iwuagwu, citizenship involves the enjoyment of basic socioeconomic and political rights as expressed in the constitution”.²³ These rights summarised include basic goods and services such as access to healthcare, education, electricity, clean water, sanitation, social protection and so forth, and the onus to provide these lies with the state. This is however not the case, as over 50% of Nigerians live in extreme poverty and are further vulnerable to shocks. One then begins to question the role of the state, and how the failure of the state to provide these services poses implications for how its citizens are deprived and put at risk.

Conclusion

This paper has discussed the state of citizenship, indigeneity and statelessness in contemporary Nigeria, with attendant impact on socio-economic and peaceful coexistence among citizens. While it is expressively given in the constitution who should be a citizen and their accompanying rights, contention over political and economic power often create misperception and misinterpretation through indigeneity laws. The politics of who gets what continues to create animosity and disaffection among communities in the country, and these conflict dynamics, coupled with the ICJ judgement, aggravate the context of statelessness in Nigeria. Official data, due to limitations, fail to reflect the true context of statelessness in the country. Yet concerns about statelessness should be extended beyond its legal sense to the range of ways in which the State may have contributed to status deprivation and displacement. In addition to the design of conflict management policies and programmes that allow for conflict transformation and inclusion of all citizens in activities of societal rebuilding, local indigeneity laws that have led to marginalisation and discrimination should be reviewed.

²² Brubaker, R. & F. Cooper. (2000), ‘Beyond “identity”’, *Theory and Society* 29: 1–47. Voros, L. (2006), ‘Methodological and theoretical aspects of “social identities” research in historiography’, in Klusáková, L. and S. G. Ellis (eds.), *Frontiers and identities: exploring the research area*, 27–45. Pisa: Pisa University Press.

²³ Iwuagwu, E. (2015), ‘The concept of citizenship: Its application and denial in the contemporary Nigerian society’, *International Journal of Research in Arts and Social Sciences (IJRASS)* 8(1): 165–177.

Absent citizenship: A case study of the Rohingya

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The world's attention was captured when from August 2017, over 700,000 Rohingya, fleeing violent attacks by Myanmar authorities, began pouring over the Myanmar border and into Bangladesh.¹ These atrocities have since been described by the UN Human Rights Council's Independent Investigation Mechanism as 'patterns of gross human rights violations which amount to the gravest crimes under international law',² (and) 'elements of extermination and deportation'.³ Cox's Bazar, in Bangladesh, which holds nearly 1 million Rohingya, is now the world's biggest refugee camp,⁴ and it is widely recognised that denial of citizenship intertwined with systemic discrimination has played a substantial role in the emergence of this crisis.

As states have increasingly turned (back) towards the practice of citizenship revocation,⁵ the denial of citizenship for so many Rohingya, offers an important case for reflections on the entitlement to citizenship, and how revocation is understood. Unlike the practice in many developed countries (such as the UK,⁶ Australia⁷ and Canada⁸), where the deprivation or revocation of citizenship is constituted as an act,⁹ the revocation of Rohingya citizenship has been opaque and processual, unfolding over several decades, through (a) a gradual and symbolic reconceptualisation of citizenship as an entitlement premised primarily on belonging to a discrete set of nationally recognised ethnic groups;¹⁰ (b) legally, through the promulgation of the 1982 Citizenship law which redefined the legal conditions under which full citizenship is enjoyed, excluding many Rohingya from holding citizenship because they were neither members of a recognised ethnic group nor had documentation to prove their existing citizenship;¹¹ and (c) administratively, through practices that stripped Rohingya of their documentation and facilitated an iterative erosion of rights associated with citizenship.¹² Further, the waves of Rohingya refugees in the 1970s, 80s and 90s, the widespread displacement of Rohingya people in response to

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¹ International Committee of the Red Cross. *Myanmar One Year On: Struggles Far From Over for Rakhine People*. <https://www.icrc.org/en/document/myanmar-one-year-struggles-far-over-people-rakhine>

² UNHRC-IIFFMM (2018), Report of the independent international fact-finding mission on Myanmar (IIFFMM), A/HRC/39/64. 39th Session. Distr.: General 12 September 2018. 19.

³ *Ibid.*, 16.

⁴ UN Office for the Coordination of Humanitarian Affairs (OCHA) <https://www.unocha.org/rohingya-refugee-crisis>

⁵ Gibney, M. J. (2020), 'Banishment and the pre-history of legitimate expulsion power', *Citizenship Studies*, 24(3): 277-300.

⁶ See analysis of use of deprivation of citizenship orders in McGuinness T. and Gower M. (2017), *Deprivation of British citizenship and withdrawal of passport facilities*. House of Commons Library Briefing Paper 9 Jun 2017.

⁷ See Australian Citizenship Amendment (Allegiance to Australia) Act 2015.

⁸ See Citizenship Act and Bill C-24 Strengthening Canadian Citizenship Act of 2014.

⁹ For analysis on the revocation practices of selected country cases see Pillai S. and Williams G. (2017), 'Twenty-First Century Banishment: Citizenship Stripping in Common Law Nations'. *International and Comparative Law Quarterly*, Volume 66, Issue 3 pp. 521-555; and Mantu S. (2018), 'Terrorist' citizens and the human right to nationality', *Journal of Contemporary European Studies*, 26(1): 28-41.

¹⁰ Cheesman, N. (2017), 'How in Myanmar "National Races" Came to Surpass Citizenship and Exclude Rohingya', *Journal of Contemporary Asia*, 47(3): 461-483; Ware, A. and Laoutides, C. (2018), *Myanmar's Rohingya Conflict*. Oxford Scholarship Online.

¹¹ Institute on Statelessness and Inclusion (ISI) (2019). *Country Position Paper. Statelessness in Myanmar*.

¹² Nyi Nyi Kyaw (2017), 'Unpacking the Presumed Statelessness of Rohingyas.' *Journal of Immigrant & Refugee Studies*, 15(3): 269-286.

extreme violence in 2012 and the Rohingya refugee crisis of 2017,¹³ provide an opportunity to consider how complex humanitarian emergencies intersect with and can reinforce denial of citizenship.

Building on the existing body of literature on the subject of discrimination of the Rohingya, this case study will summarise key developments in the Rohingya's experience of citizenship. In contrast to the available literature on citizenship revocation that has to date largely focused on developed country cases, revocation here will be considered not as an individual procedural act, but as a gradual process conducted through both administrative practice and legal change, and bolstered through the development of a strong nation-building narrative, grounded on a 'highly exclusive understanding of ethnic belonging'.¹⁴ The case study will then turn to the more recent waves of displacement and migration of the Rohingya, which have created humanitarian emergencies that are deeply intertwined with issues of citizenship and its revocation. Finally, drawing on these observations, the case study will outline points for wider consideration by the community of scholars working on citizenship.

Why an absence of citizenship for the Rohingya?

The Rohingya are a predominantly Muslim group of over a million,¹⁵ whose ancestors are understood to have resided in what is modern-day Rakhine State from as early as the ninth century.¹⁶ Evidence of this long-term lineage continues to be debated, but it is clear that in more recent history, the Rohingya have been citizens of Myanmar.¹⁷ Following its independence from the British, Burma, now Myanmar, made allowances for automatic acquisition of citizenship under the 1948 Union Citizenship Act, under which (amongst other conditions), anyone whose grandparents had resided permanently in Burma was a citizen.¹⁸ Although citizens could be granted a Union Certificate of Citizenship,¹⁹ very few of these were issued, and the vast majority of the population were instead given National Registration Cards (NRCs), which were equated with proof of citizenship.²⁰ At the beginning of the nation's independent political journey therefore, Rohingya people were part of the national community of Burma and experienced the same entitlements available to others in the newly created country.

¹³ De Chickera, A. (2018), *Podcast Season 2 Episode 5: Statelessness*. MOAS. <https://www.moas.eu/blog-podcast-season-2-episode-5-statelessness/>; Nyi Nyi Kyaw (2017), 'Unpacking the Presumed Statelessness of Rohingyas', *Journal of Immigrant & Refugee Studies*, 15(3): 269-286; Amnesty International (2019), 'I don't know what my future will be.' *Advocacy update on Rohingya Refugees in Bangladesh*. https://www.amnesty.be/IMG/pdf/i_dont_know_what_my_future_will_be.pdf

¹⁴ Arraiza, J. M. & O. Vonk (2017), *Report on Citizenship Law: Myanmar*. Country Report 2017/14. Robert Schuman Centre for Advanced Studies, European University Institute. 2.

¹⁵ In 2014, over 1.2 million Rohingya were estimated to be residing in Myanmar. As the most recent government census, conducted in 2014, excluded Rohingya from the count on the ground that the group is not a recognised ethnic nationality, this figure cannot be verified precisely (Mahmood S. et al (2017), 'The Rohingya people of Myanmar: health, human rights, and identity' *Lancet*; 389: 1841–50 Published Online December 1, 2016).

¹⁶ Farzana, K. F. (2017), *Memories of Burmese Rohingya Refugees: Contested Identity and Belonging*. New York: Palgrave Macmillan US; Wade, F. (2017), *Myanmar's Enemy Within: Buddhist Violence and the Making of a Muslim 'Other'*. London: Zed Books.

¹⁷ Nyi Nyi Kyaw (2017), 'Unpacking the Presumed Statelessness of Rohingyas', *Journal of Immigrant & Refugee Studies*, 15(3): 269-286.

¹⁸ Article 5(a-c), 1948 Union Citizenship Act (Act LXVI, 8 November 1948). Cited in Arraiza & Vonk (2017).

¹⁹ Arraiza J. M. & O. Vonk (2017), *Report on Citizenship Law: Myanmar*. Country Report 2017/14. Robert Schuman Centre for Advanced Studies. European University Institute.

²⁰ Nyi Nyi Kyaw (2017), 'Unpacking the Presumed Statelessness of Rohingyas', *Journal of Immigrant & Refugee Studies*, 15(3): 271.

The condition of the Rohingya today however, is one of chronic statelessness.²¹ This change in circumstances pivots on a number of factors: firstly, the gradual privileging of official national ethnicities or ‘*taingyintha*’ – in which the Rohingya are not included – as the primary currency of belonging, to the national community;²² secondly, the treatment of citizenship in the 1982 Citizenship Law which redefined citizenship and in so doing, de facto revoked the citizenship of those who were neither covered by the official list of national ethnicities nor able to prove their existing citizenship;²³ and thirdly, the ways in which successive Myanmar Governments have pursued administrative measures – before and after the 1982 Law was promulgated – that deprived the Rohingya of the documentation necessary for accessing rights associated with citizenship or for obtaining a form of citizenship under the provisions of the 1982 Law.²⁴ Taken together, these amount to a process of citizenship revocation which has progressively transformed many Rohingya and members of other minority groups²⁵ not included in the official recognised list of ethnic nationalities, into stateless persons. The following sections examine these factors.

Firstly, as above, belonging to Myanmar’s body of citizens, is premised upon membership of an approved ethnic nationality.²⁶ Although both the 1947 Constitution and the 1948 Union Citizenship Act refer to ‘indigenous races’,²⁷ it was not until the 1960s, that the use of ‘national races’ or ‘*taingyintha*’ became part of the official lexicon of the authorities and evolved to be an important tool of state-building,²⁸ which emphasised the Government’s intention to bring social and economic returns to those recognised as members of the national races, and ‘meshed with a larger programme for political

²¹ Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine. Final Report of the Advisory Commission on Rakhine State*; UNHCR (2018), *Independent evaluation of UNHCR’s emergency response to the Rohingya refugees influx in Bangladesh August 2017– September 2018: Evaluation Report*

²² Cheesman, N. (2017), ‘How in Myanmar “National Races” Came to Surpass Citizenship and Exclude Rohingya’, *Journal of Contemporary Asia*, 47(3): 461.

²³ ISI (2019). Country Position Paper. Statelessness in Myanmar.

²⁴ Nyi Nyi Kyaw (2017), ‘Unpacking the Presumed Statelessness of Rohingyas’, *Journal of Immigrant & Refugee Studies*, 15(3): 269-286; Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine. Final Report of the Advisory Commission on Rakhine State*; UNHCR (2018), *Independent evaluation of UNHCR’s emergency response to the Rohingya refugees influx in Bangladesh August 2017– September 2018: Evaluation Report*

²⁵ Whilst other groups in Myanmar are affected by the discrimination enshrined in the Law, in particular Chinese and Indian communities, less is known about their experiences (ISI 2019). A report by the High Level Committee on Indian Diaspora however, stated that of Myanmar’s sizeable Indian community, 400,000 are stateless (Mukhopadhyay, J. (2010), ‘Indian Diaspora in South East Asia: Predicaments and Prospects’, *The Indian Journal of Political Science*, 71(3)). For further analysis on the Chinese community’s experience of citizenship and negotiation with the authorities see Ho, E. L and L. J. Chua (2015), ‘Law and ‘race’ in the citizenship spaces of Myanmar: spatial strategies and the political subjectivity of the Burmese Chinese’, *Ethnic and Racial Studies*, 39(5): 896-916). It is however, understood that the Rohingya are the country’s main stateless population (ISI, 2019).

²⁶ Cheesman, N. (2015), *Opposing the Rule of Law*. Cambridge University Press; International Commission of Jurists (ICJ) (2019), *Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible. A Legal Briefing*; Nyi Nyi Kyaw (2017), ‘Unpacking the Presumed Statelessness of Rohingyas’, *Journal of Immigrant & Refugee Studies*, 15(3): 269-286; Ware, A. & C. Laoutides, (2018), *Myanmar’s Rohingya Conflict*. Oxford Scholarship Online.

²⁷ Arraiza J. M. & O.Vonk (2017), *Report on Citizenship Law: Myanmar*. Country Report 2017/14. Robert Schuman Centre for Advanced Studies. European University Institute.

²⁸ This extensive nationalisation project launched by General Ne Win included actions which resulted in an exodus of hundreds of thousand Indians from Burma (Chakravarti 1971; Holmes 1967; Silverstein 1966 cited in Nyi Nyi Kyaw (2017), ‘Unpacking the Presumed Statelessness of Rohingyas’, *Journal of Immigrant & Refugee Studies*, 15(3): 273) and also had profound consequences for Myanmar residents descended from Chinese migrants (Cheesman, N. (2017) ‘How in Myanmar “National Races” Came to Surpass Citizenship and Exclude Rohingya’, *Journal of Contemporary Asia*, 47(3): 461–483).

domination and exclusion through the nationalisation of assets and deportation of alleged aliens.²⁹ The concept of ethnic nationalities has had a profound effect how membership of Myanmar as a political entity is understood, and as Cheesman argues, has surpassed citizenship as a unit of belonging (2017). It is now so embedded in policy that the 2008 constitution preamble text refers to the political community in Myanmar ‘not as an aggregation of citizens, but of *taingyintha*, thereby elevating *taingyintha* membership above citizenship.’³⁰

This shift in policy towards citizenship as an exclusive notion of ethnic belonging was enshrined in legislation through the 1982 Citizenship Law, which created tiers of ‘full’, ‘associated’ and ‘naturalised’ citizenship, conferring different entitlements.³¹ The new legislative arrangements did not allow for ‘*ius soli*’ acquisition of citizenship for Rohingya or for any other minority not included in the official recognised list of ethnic nationalities.³² This limiting of citizenship by birth to members of ethnic nationalities only, is a key cause of statelessness, and is singled out by former UN Secretary General Kofi Annan, Chair of the Advisory Commission on Rakhine, as a critical issue in urgent need of reform in the Commission’s final report to the Government of Myanmar.³³

Whilst the Law states that those who were already citizens when the law came into force shall remain citizens, as observed by the Institute on Statelessness and Inclusion (ISI),

‘a lack of documentary evidence of citizenship together with the arbitrary removal and destruction of state-issued documents by state authorities leaves many of those entitled to citizenship under the 1948 framework, in practice, unrecognised as citizens under the 1982 Citizenship Law.’³⁴

Under the Law, Rohingya, along with other groups that do not fit its ‘rigid ethnic criteria’,³⁵ may also apply for associated or naturalised citizenship if they fulfil certain conditions and hold the necessary documentation. The rights of associate and naturalised citizens are however qualified,³⁶ and unlike full citizens, authorities can draw on a range of provisions to revoke the citizenship of these groups.³⁷

Evidently, this legislation plays a central role in the denial of citizenship to the Rohingya and other minorities. It is both inconsistent with international law and with Myanmar’s own obligations in that

²⁹ Cheesman, N. (2017), ‘How in Myanmar “National Races” Came to Surpass Citizenship and Exclude Rohingya’, *Journal of Contemporary Asia*, 47(3): 465-66.

³⁰ Ware, A. & Laoutides, C. (2018), *Myanmar's Rohingya Conflict*. Oxford Scholarship Online.16.

³¹ Cheesman, N. (2017), ‘How in Myanmar “National Races” Came to Surpass Citizenship and Exclude Rohingya.’ *Journal of Contemporary Asia*, 47(3): 461-483.

³² Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine*. Final Report of the Advisory Commission on Rakhine State; Arraiza J. M. & O. Vonk (2017), *Report on Citizenship Law: Myanmar*. Country Report 2017/14. Robert Schuman Centre for Advanced Studies. European University Institute.

³³ Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine*. Final Report of the Advisory Commission on Rakhine State. 30.

³⁴ ISI (2019). Country Position Paper. Statelessness in Myanmar. 6.

³⁵ *Ibid.*, 12.

³⁶ For further discussion on the differences between the classes of citizenship outlined in the 1982 Law, see ICJ (2019) *Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible. A Legal Briefing*.

³⁷ Whilst the provisions in the Law make it easier to revoke the citizenship of naturalised or associate citizens than full citizens, there does not appear to be significant evidence that the Government of Myanmar has systematically employed the use of formal citizenship revocation provisions as outlined in the Law to legally remove the citizenship of the Rohingya. As the case study argues, the Rohingya have experienced a progressive revocation of their citizenship primarily through a wholesale redefinition of what citizenship for Myanmar is imagined to be, as well as through discriminatory procedures and an uneven implementation of an already discriminatory law, which has prevented those who would legally qualify for citizenship from doing so for administrative or documentation related reasons. In this sense, the use of formal, legal revocation procedures has been superseded by other strategies for removing citizenship from the Rohingya (and other groups).

regard,³⁸ and its exclusion of certain groups who had previously held citizenship, from full ‘*ius soli*’ citizenship amounts to a further step in the process of revocation and results in the creation of stateless persons. However, whilst the law constitutes a legal revocation of citizenship for Rohingya and other non-recognised groups unable to prove their existing citizenship, it is not the sole cause. As Nyi Nyi Kyaw argues, it is also through administrative practices, including an uneven implementation of the law and failure to support a process of citizenisation for those that do qualify for it, that the revocation of entitlements associated with citizenship has been conducted.³⁹

An illustration of this is the Government’s 1989 policy to put in place an updated system of colour coded identity cards, which aligned with the classes of citizenship.⁴⁰ When the Government took the step of replacing the existing documentation system under which most people held NRCs with colour coded Citizenship Scrutiny Cards,⁴¹ the Rohingya were left out⁴² and therefore did not receive proof of citizenship as recognised by the new documentation system. Instead, the Rohingya continued to hold their NRCs, which allowed them access to rights associated with citizenship entitlements until 1995, when under a further documentation project, the authorities began to replace NRCs with temporary identity cards, known as White Cards.⁴³ Nyi Nyi Kyaw suggests that by 2014, only half of the Rohingya held White Cards, leaving the rest – including many young children – undocumented and in a ‘legal limbo’.⁴⁴

This uncertainty was transformed into a more substantive revocation of rights associated with citizenship when in 2014, the Government enacted a Law that prevented White Card holders from establishing or joining political parties.⁴⁵ In parallel, entitlements were further compromised in 2014 when the Government decided last-minute, to prohibit people from self-identifying as Rohingya as part of the national census enumeration.⁴⁶ The additional decision that all White Cards would expire and must be returned to the Government,⁴⁷ both left a large number of Rohingya in a completely undocumented state, and disenfranchised the majority of Rohingya ahead of the 2015 national election, both of which constituted further revocation of rights associated with citizenship. The Government of Myanmar did offer a potential route back to citizenship for those whose White Cards were being terminated through a process of national verification, the objective of which ‘was to scrutinize them as to whether they were entitled to become a citizen.’⁴⁸ The verification process however, included a

³⁸ ICJ (2019), *Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible*. A Legal Briefing; Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine*. Final Report of the Advisory Commission on Rakhine State

³⁹ Nyi Nyi Kyaw (2017), ‘Unpacking the Presumed Statelessness of Rohingyas’, *Journal of Immigrant & Refugee Studies*, 15(3): 269-286.

⁴⁰ *Ibid.*, 278.

⁴¹ Justice Base (2018), *A Legal Guide to Citizenship and Identity Documents in Myanmar*.

⁴² Nyi Nyi Kyaw (2017), ‘Unpacking the Presumed Statelessness of Rohingyas’, *Journal of Immigrant & Refugee Studies*, 15(3): 269-286.

⁴³ Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine*. Final Report of the Advisory Commission on Rakhine State.

⁴⁴ Nyi Nyi Kyaw (2017), ‘Unpacking the Presumed Statelessness of Rohingyas’, *Journal of Immigrant & Refugee Studies*, 15(3): 279.

⁴⁵ Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine*. Final Report of the Advisory Commission on Rakhine State

⁴⁶ Ferguson, J. (2015) ‘Who’s Counting? Ethnicity, Belonging, and the National Census in Burma/Myanmar’, *Bijdragen tot de Taal Land en Volkenkunde*, 171(1): 1–28.

⁴⁷ Norwegian Refugee Council (2018), *A Gender Analysis of the Right to Nationality in Myanmar*.

⁴⁸ Government of Myanmar (2015), Notification 19/2015 dated February 11. Issued by the President’s Office <https://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-7031>

requirement for Rohingya to self-identify as foreigners by labelling themselves ‘Bengali’, in order to qualify for application for a verification card, a pathway rejected by many.⁴⁹

In the case of the Rohingya, there has been no single act which has revoked all aspects of their citizenship, but the combination of a strong narrative denoting belonging as restricted to those with membership of official ethnic groups; administrative procedures that have removed documentation and eroded every day rights associated with citizenship, and a legislative shift that has redefined and narrowed the legal boundaries upon which citizenship itself is premised, amount to an iterative and ongoing revocation of both citizenship and the rights associated with it. This processual revocation has intensified over time, and as discussed below, has been escalated through humanitarian emergencies.

Humanitarian emergencies and denial of citizenship

Whilst the Rohingya have experienced decades of quotidian, often violent rights discrimination and progressive revocation of entitlements associated with citizenship, they have also been affected by events of mass humanitarian emergency, which are intrinsically linked to their lack of citizenship. These large-scale humanitarian emergencies, leading to displacement and migration, have intersected with and in some cases reinforced existing discriminations even as officially, policy measures such as the appointment of the Advisory Commission on Rakhine, by the Government of Myanmar sought to address the underlying causes of the problems.

Periodic ‘waves of exodus’ of Rohingya into Bangladesh, occurred in the 1970s, 80s and 90s.⁵⁰ In 2012, the ongoing restrictions on the Rohingya’s basic rights in Rakhine State⁵¹ intersected with a full-scale lock-down on their freedom of movement when violence between July and October created the internal displacement of over 140,000 Rohingya and non-Rohingya Muslims as well as several thousand Rakhine people in Rakhine State.⁵² Those – mostly Rohingya – who were displaced as a result of this violence were provided emergency shelter in camps for internally displaced persons (IDPs). Over seven years on from their initial displacement however, the majority of those displaced continue to reside in these camps, with many of their rights denied, including freedom of movement and access to livelihoods, and with seemingly, no prospect of returns⁵³ in line with international standards.⁵⁴ The impact of an ethnically exclusive legal hierarchy of citizenships, intersects with how the humanitarian emergency in central Rakhine has itself evolved, with denial of citizenship firmly entrenched in the camps through authorities’ control of IDPs’ movements, and denial of other rights. At the same time, due to differences

⁴⁹ Ware, A. and Laoutides, C. (2018), *Myanmar's Rohingya Conflict*. Oxford Scholarship Online.

⁵⁰ Cheesman, N. (2017), ‘How in Myanmar “National Races” Came to Surpass Citizenship and Exclude Rohingya’, *Journal of Contemporary Asia*, 47(3): 461–483; Nyi Nyi Kyaw (2017), ‘Unpacking the Presumed Statelessness of Rohingyas.’ *Journal of Immigrant & Refugee Studies*, 15(3): 269-286; Cairns, E. (2017), *I Still don't want to go home: Voices of Rohingya Refugees*. Oxfam; De Chickera, A. (2018) *Podcast Season 2 Episode 5: Statelessness*. MOAS. <https://www.moas.eu/blog-podcast-season-2-episode-5-statelessness/>

⁵¹ Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine*. Final Report of the Advisory Commission on Rakhine State.

⁵² OCHA (2014), *Myanmar: Humanitarian lifeline cut following violence against aid agencies in Rakhine*. <https://www.unocha.org/story/myanmar-humanitarian-lifeline-cut-following-violence-against-aid-agencies-rakhine>

⁵³ Human Rights Watch (2019), *Myanmar: Events of 2019*. <https://www.hrw.org/world-report/2020/country-chapters/myanmar-burma>

⁵⁴ A Government process to close certain camps in central Rakhine has received criticism from the international community for its failure to adhere to international standards on returns. See <https://www.theguardian.com/world/2019/jun/17/myanmar-un-threatens-to-withdraw-aid-over-policy-of-apartheid-against-rohingya>

in how successive waves of Rohingya were received by the Bangladeshi authorities, only some were granted formal refugee status,⁵⁵ a condition which further compounds their lack of formal recognition.⁵⁶

A number of observations on the experience of the Rohingya should be given further consideration by the wider community of scholars engaged on issues of citizenship and its revocation. Firstly, the experience by the Rohingya and other groups who do not enjoy full citizenship in Myanmar is an example of citizenship revocation as an ongoing process rather than a distinct act. The processual nature of citizenship revocation sets these practices in the global South apart from how this is typically characterised in the developed world. Hence, as others have argued,⁵⁷ there is a need to invest in research on citizenship revocation in developing countries and expand the focus to comparative analysis of policies in the global South. Secondly, in the case of the Myanmar, it is clear that ethnic nationalities now provide the foundation for defining membership of the body politic, with profound consequences for how and whether citizenship is enjoyed by different groups.⁵⁸ With the growing number of internal disputes and civil wars seen since the end of the Cold War,⁵⁹ this may have implications for how citizenship as recognised in International Law, is treated, particularly in volatile and fragile contexts where rule of law is weak. Thirdly, the case study raises questions for how the international community deals with citizenship and its revocation, in the case of protracted emergencies and where denial of entitlements has the potential to be operationalised through humanitarian settings. The risk of such protracted crises further entrenching the discrimination of groups and denial of their fundamental rights, in turn raises the issue of how international actors can in such situations, ensure they do no harm, and take steps to consider citizenship and its revocation as connected to the elements of a protracted humanitarian crisis.

⁵⁵ UNHCR (2007), Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees.

⁵⁶ At the 8477th meeting of the UN Security Council on 28th February 2019, the Foreign Secretary of Bangladesh, Shahidul Haque, also announced that Bangladesh would no longer be able to accommodate people from Myanmar (source: <https://www.un.org/press/en/2019/sc13727.doc.htm>).

⁵⁷ Birnie, R. & R. Bauböck (2020), 'Introduction: expulsion and citizenship in the 21st century.' *Citizenship Studies*, 24(3): 265-276.

⁵⁸ Advisory Commission on Rakhine State (2017), *Towards a peaceful, fair and prosperous future for the people of Rakhine*. Final Report of the Advisory Commission on Rakhine State.

⁵⁹ Barnett, M. & Weiss, T. (eds.) (2008), *Humanitarianism in Question. Politics, Power, Ethics*. Cornell University Press.

On the verge: Revocation and denial of citizenship in India

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Introduction

Citizenship has become one of the most definitive subjects of crisis in India since 2014. In December 2019, the Indian government passed the controversial Citizenship Amendment Act ('the CAA'). For the first time, India explicitly incorporated a religious test for citizenship despite asserting that it has a secular constitution. This was received with great disappointment, anguish and eventually anxiety, as thousands participated in unprecedented protests across the country. The protestors were worried that – conjoined with the proposed National Register of Indian Citizens ('the NRIC'), which sought to enumerate all the citizens based on documentary evidence – the CAA would lead to mass disenfranchisement. These protests were first greeted by state disquiet, and then state repression.

The worries have been particularly profound because of the news from India's eastern state of Assam. From 2014 to 2019, the Indian Supreme Court supervised a citizen enumeration process called the National Register of Citizens ('the NRC') in the state, in the background of a long history of anti-immigrant sentiment. The final list of the NRC in August 2019 left out 1.9 million residents of the state. They now stand on the verge of statelessness, with only the right of appeal to the government instituted tribunals. By the time the CAA was passed, the stories from Assam – of arbitrary citizenship determination and the detention centres – were ubiquitous.

The Indian state has publicly framed the NRC in Assam and the proposed NRIC across India the state as ordinary citizenship determination procedures. It has also described the CAA as a policy of purely granting citizenship to the persecuted minorities from the country's neighbouring region. The official framing and justifications of the Assam NRC and CAA-NRIC tend to obscure the mechanisms and implications of these policies. This essay disputes these characterisations. It adopts a different set of vocabularies that we propose capture the full essence of the NRC, the NRIC and the CAA within the Indian citizenship regime.

We argue that these policies – appreciated in their larger historical trajectory and full practical context – amount to citizenship denial and threaten citizenship revocation. By revocation of citizenship, we mean an involuntary loss of citizenship whether automatic or non-automatic (including lapse, withdrawal, nullification) that is not initiated by the person or their legal representative.¹ Revocation of citizenship is often interchangeably used with deprivation of citizenship in domestic law and international law. We refer to denial of citizenship as the non-attribution of citizenship status to a person or group who might otherwise be eligible under the previously existing regime.

We place the NRC in Assam and the CAA-NRIC in their legal, historical and political context. We describe their antecedents and legal mechanics. We also give an account of the arguments that important social and political actors have made across the spectrum of opinion. We show that a series of citizenship denial policies led up to the enactment of the CAA in 2019. The CAA has partially – and discriminatorily – made certain religious groups immune from citizenship denial, aggravating the impact on excluded groups. We argue that the procedural arbitrariness and legally unspecified safeguards in Assam's NRC threaten citizenship revocation. We also argue that the cumulative operation of the CAA and the proposed NRIC threatens mass citizenship revocation. We argue that NRC and CAA-NRIC are dangerous schemes of citizenship revocation that can impact not only certain undocumented migrants but also make Indian citizens extremely vulnerable to citizenship revocation.

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¹ GLOBALCIT (2020), *Glossary on Citizenship and Electoral Rights*. https://cadmus.eui.eu/bitstream/handle/1814/67362/RSCAS_GLOBALCIT_Glossary_2020.pdf (consulted 24 July 2020).

Our contribution initially provides the background of India's citizenship regime. While the regime started as an inclusive one in 1950, we argue that the subsequent amendments in 1986 and 2003 amounted to citizenship denial. These amendments severely curtailed access to citizenship for undocumented immigrants and their children but did not plainly discriminate against any community. The following section discusses the historically evolving citizenship determination procedures in Assam. We argue that these procedures do not adequately appreciate the social context that hinders the availability of documentary proof particularly for vulnerable communities. The lack of fair and transparent citizenship determination procedures, and the weak institutional independence of the tribunals threaten citizenship revocation. Moreover, the incarceration of suspected foreigners already amounts to denial of rights associated with citizenship.

In the final section, we turn our focus to the CAA 2019. The legislation facially grants citizenship to a section of undocumented immigrants that the previous amendments (discussed earlier) had denied. We argue that by partially, selectively and discriminatorily removing the bar on access to citizenship, the CAA in fact entrenches and aggravates the ill effects of citizenship denial. We also argue that the cumulative operation of the proposed NRIC and the CAA at the national level threatens citizenship revocation.

Citizenship regime in India

This section analyses the amendments in the Indian citizenship regime to argue that they have restricted access to citizenship, amounting to citizenship denial.

The Constituent Assembly framed the Indian Constitution from 1946 to 1949 in the throes of the unprecedented and tragic Partition of the country. The refugee crisis was thus the background of the Indian citizenship regime's framing. The Constitution provided detailed qualifications of citizenship applicable at its commencement in 1950, including for the new immigrants. However, it did not entrench any specific regime for the time to come, leaving it for parliament to determine. The Constituent Assembly's deliberations reflected an orientation towards a progressive regime. This was eventually manifested in the Citizenship Act that the Indian parliament enacted in 1955, which endorsed the *ius soli* conception of citizenship, and expansive naturalisation and registration routes to citizenship.²

But over time, the Indian citizenship regime has shifted towards a more exclusive and ethnic conception based on descent.³ In 1986, parliament amended the Citizenship Act to deny citizenship to the persons born in India after 1 July 1987 without an Indian parent.⁴ It justified this on the ground of the "influx of foreign nationals" and the objective of "preventing automatic acquisition of citizenship of India by birth".⁵

The 2003 amendment to the Citizenship Act further extended this denial. It introduced the category of 'illegal migrants' defined as undocumented immigrants or foreigners without legal permission to stay in India.⁶ The amendment barred 'illegal migrants' from any route to citizenship either through naturalisation or registration procedure. The impact of citizenship denial was even more severe for the children of 'illegal migrants'. The amendment denied citizenship by birth to persons born in India after 2003 if even one of their parents is an 'illegal migrant'.

² Scholars have noted how the implementation of citizenship policies in the aftermath of the Partition discriminated against the Muslim citizens of the country. See Zamindar, V. F. (2007), *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories*. Columbia University Press.

³ Mitra, S. K. (2008), 'Level playing fields: The post-colonial state, democracy, courts and citizenship in India', *German Law Journal* 9(3): 345.

⁴ The Citizenship (Amendment) Act 1986.

⁵ The Citizenship (Amendment) Act 1986, Statement of Object and Reasons.

⁶ The Citizenship (Amendment) Act 2003.

Each of these amendments was driven by a heightening anxiety about the undocumented immigrants from Bangladesh. The anti-immigrant rhetoric has also increasingly taken a religious frame, with dominant political actors expressing worries about a demographic shift in favour of Muslims especially in eastern India.⁷ The shift towards *ius sanguinis* was meant to create a disincentive for immigration from Bangladesh. But the citizenship denial at the heart of the 1986 and 2003 amendments also threatens to create a population in India that despite being born in the country is permanently excluded from citizenship. They clearly have a disproportionate impact on children born in India who cannot even make viable claims to the citizenship of any other country.

Assam and the National Register of Citizens

The biggest concerns related to citizenship revocation and statelessness have emerged in Assam. While the controversy has older antecedents, the initiation of the NRC by the Indian Supreme Court in 2014 and the enactment of the CAA in 2019 has added further worrying dimensions to it.

Public justifications

Assam is an ethnically and religiously diverse province. According to the latest census, 61.47% of the state professes Hinduism and more than 34% are Muslims. 13% of the population falls under the Scheduled Tribes, which is a category that comes closest to the indigenous people. Approximately 30% of the population is Bengali speakers. These categories crisscross and overlap. Bengali speakers include both Hindus and Muslims, and numerous Muslim communities identify as Assamese speakers.

The state has had a long history of immigration, including Bengali migration that goes back to at least the early nineteenth century.⁸ However, the issue became increasingly volatile in the 1970s after the influx of refugees fleeing the Bangladesh war. Most of the refugees returned to Bangladesh after the end of the war.⁹ But there remained a growing concern among many sections of the Assamese society – both Assamese speakers and the Scheduled Tribes – that this was not so. There was a heightening sentiment among them that the Bengali immigrants would dominate the politics of the state and threaten what they understood to be the indigenous culture of the state.

In late 1970s, the students came to spearhead the agitation for the disenfranchisement and deportation of Bengali ‘illegal migrants’.¹⁰ This culminated in an agreement – called the Assam Accord – between the various segments of the Assam agitation and the Indian government in 1985, with the latter committing itself to the deportation of migrants who entered the country after the formation of Bangladesh on or after 25 March 1971. As a balancing act, the Indian government introduced Section 6A in the Citizenship Act that provided a route to citizenship for all undocumented migrants that entered Assam before that date.

The public pressure had led the Indian government to establish a legal infrastructure to detect foreigners. In 1983, the Indian parliament passed the Illegal Migrants (Determination by Tribunals) Act (IMDT).¹¹ Alongside this, the state significantly expanded the Border Police that was empowered to identify suspected foreigners and refer them to the Foreigners Tribunals. The government constituted

⁷ Gillan, M. (2002), ‘Refugees or infiltrators? The Bharatiya Janata Party and “illegal” migration from Bangladesh’, *Asian Studies Review* 26(1): 73, 86; Weiner, M. (1983), ‘The political demography of Assam’s anti-immigrant movement’, *Population and Development Review* 9(2): 279, 285-289.

⁸ Baruah, S. (1994), *India Against Itself: Assam and the Politics of Nationality*. University of Pennsylvania Press 44-68.

⁹ Weiner, M. (1993), ‘Rejected Peoples and Unwanted Migrants in South Asia’, *Economic and Political Weekly* 28(34): 1741.

¹⁰ Baruah, S. (1986), ‘Immigration, Ethnic Conflict, and Political Turmoil--Assam, 1979-1985’, *Asian Survey* 26(11): 1184.

¹¹ The Illegal Migrants (Determination by Tribunals) Act 1983.

these tribunals as quasi-judicial bodies and not as traditional courts of law. Members – not judges – preside over the tribunals without any security of tenure. As the need for tribunals has increased, the government has simultaneously lowered the minimum qualifications for these members.¹²

Towards the end of the 1990s, a distinctly securitised discourse against Bengali Muslims started emerging. The most profound example of this was the report by the state's governor Lt Gen S.K. Sinha, who described Bengali immigration as a concerted Islamic infiltration that would compromise national security and proliferate Islamic terrorism. The religious framing of the immigration controversy has only become sharper with the rising political salience of the Bhartiya Janata Party (BJP) that now rules both the central and state governments.¹³ The securitised rhetoric in Assam has been accompanied by numerous speculative assertions that the state is overrun by 'illegal migrants', despite the complete absence of any official or rigorous data.

Assam's National Register of Citizens

The Indian Supreme Court has played a significant role in the immigration debate. In 2005 and 2006, the Court controversially struck down the IMDT Act.¹⁴ The Court explicitly endorsed the anxiety about uncontrolled immigration and the threat of Islamic terrorism. It noted that the IMDT Act had failed to identify large enough numbers of illegal migrants and placed the burden of proof on the suspected foreigner in tribunal proceedings.¹⁵

The most critical involvement of the Court was its initiation of the NRC in 2013.¹⁶ The bench led by Chief Justice Gogoi bemoaned the ineffectiveness of the existing policies. It directed the update of the NRC, last prepared in 1951, which contained the particulars of all citizens of the state. The Court assumed the supervision of the NRC enumeration. In a series of executive-sounding orders, it approved the nature of mandated documentary evidence, verification procedures and deadlines.¹⁷

The threat of citizenship revocation

With the Court's involvement, there was an unprecedented social and political consensus for the NRC. Most sections, including the Bengalis, saw in it a comprehensive resolution of the immigration controversy. However, numerous civil society organisations soon raised serious concerns as the NRC process started rolling out.

The biggest worry predictably was the unavailability of original government documents, many of which either were not maintained carefully or difficult to procure. Many members of the transgender community who had been disowned by their families were unable to submit documents in the absence of cards reflecting their preferred identities. Women, who are disproportionately illiterate and poor, were

¹² Indian Express (14 June 2019), *NRC deadline nearing: Criteria for Foreigners' Tribunals members changed*. <https://indianexpress.com/article/north-east-india/assam/nrc-deadline-nearing-criteria-for-foreigners-tribunals-members-changed-5779685/>. (consulted 25 June 2020)

¹³ Gillian, M. (2002), 'Refugees or infiltrators? The Bharatiya Janata Party and "illegal" migration from Bangladesh', *Asian Studies Review* 26(1):73.

¹⁴ Sarbananda Sonowal v. Union of India (2005) 5 Supreme Court Cases 665; Sarbananda Sonowal v. Union of India (2007) 1 SCC 174.

¹⁵ M. Mohsin Alam Bhat, *Twilight Citizenship*. https://www.india-seminar.com/2020/729/729_m_mohsin_alam_bhat.htm. (consulted 25 June 2020)

¹⁶ Assam Sanmilita Mahasangha v. Union of India (2015) 3 SCC 1.

¹⁷ The Supreme Court did this in a series of orders, including *Assam Sanmilita Mahasangha v. Union of India* (2019) 9 SCC 79; *Assam Public Works v. Union of India* (2017) SCC Online SC 1885; *Assam Public Works v. Union of India* (2018) SCC Online SC 3366; *Assam Public Works v. Union of India* (2018) 9 SCC 229; *Assam Public Works v. Union of India* (2018) SCC Online SC 1014; *Assam Public Works v. Union of India* (2019) 9 SCC 70.

also vulnerable. Civil society organisations also raised serious concerns about the disparate treatment of what the NRC administration called ‘original inhabitants’, who were required to meet lower evidentiary requirements. The NRC administration included what it considered to be communities indigenous to Assam and reportedly excluded Muslim communities.¹⁸

The final NRC published on 31 August 2019 contained 31 million persons, leaving out 1.9 million residents of the state. All persons who have been excluded from the NRC now have a right to appeal to the Foreigners Tribunals. The Indian government has already increased the number of tribunals to 300, which will be hearing these appeals soon.

But these tribunals continue to suffer from the same institutional weaknesses. Human rights and civil society organisations have consistently noted that the tribunals have deviated from standard rules of evidence and procedure at the cost of due process. Recent studies also show a pattern of declaring persons foreigners on technical grounds like minor errors in spellings and dates.¹⁹ This, combined with the fact that the burden of proof is on the individuals, has made tribunal proceedings exceedingly hard. There are also concerns that the absence of adequate institutional independence will allow the state to influence tribunal members in declaring people foreigners.

The combination of all these factors – the social and bureaucratic context, unavailability of documentary proof, acute economic vulnerability, and procedural and institutional weaknesses of the tribunals – place the individuals subject to the NRC procedures under an extreme threat of citizenship revocation. Thus, while the Indian state – the government and the Supreme Court – has framed these as citizenship determination procedures, these factors make ordinary citizens vulnerable to the revocation of their legally-held citizenship status.

At present, the formal mechanism in India only provides for revocation of citizenship of persons who are citizens by naturalisation or registration.²⁰ The grounds for revocation include fraud in registration or naturalisation, disloyalty towards the Constitution of India, contact with the enemy during war, certain crimes and residing outside India continuously for seven years.²¹ The formal mechanism also specifies that Indian citizenship automatically lapses upon acquisition of citizenship of another country.²²

The formal revocation mechanism does not apply to anyone who is an Indian citizen by birth or descent. The practical mechanisms of the NRC extend this domain of revocation – albeit informally and by implication – to persons who may be legally Indian citizens but fail to succeed in the bureaucratic and tribunal proceedings.

Implications of Assam’s NRC

There is also a worrying degree of uncertainty about the status of those who are excluded and fail in their appeals.²³ They will have the right to appeal to higher courts, including the Supreme Court, but the

¹⁸ Scroll (25 July 2019), *How many times will NRC test your Indian citizenship? Depends on which community you belong to*. <https://scroll.in/article/931646/how-many-times-will-nrc-test-your-indian-citizenship-depends-on-which-community-you-belong-to>. (consulted 24 June 2020)

¹⁹ Amnesty International (20 November 2019), *Designed to Exclude: How India’s Courts are Allowing Foreigners Tribunals to Render People Stateless in Assam*. <https://amnesty.org.in/wp-content/uploads/2019/11/Assam-Foreigners-Tribunals-Report-1.pdf>. (consulted 24 June 2020)

²⁰ The Citizenship Act 1955, section 10.

²¹ The Citizenship Act 1955, section 10(2).

²² The Citizenship Act 1955, section 9. See also, GLOBALCIT (2017), *Global Database on Modes of Loss of Citizenship*. <https://globalcit.eu/loss-of-citizenship/>. (consulted 6 August 2020)

²³ Amnesty International (31 August 2019), *Uncertain Destiny For Millions In Assam Post NRC*. <https://amnesty.org.in/news-update/uncertain-destiny-for-millions-in-assam-post-nrc/>. (consulted 23 June 2020)

expensive appellate procedures are likely to exclude most people. Excluded persons may end up in detention centres as numerous persons declared foreigners by the tribunals have.²⁴

India is yet to work out – nor has it shown any inclination to work out – any diplomatic arrangement with Bangladesh. The fact that many declared foreigners may be born in India will add to the unlikelihood of this diplomatic arrangement. Moreover, the Indian government maintains that Assam's NRC is an internal matter for India and will have no consequence for Bangladesh.²⁵ The government of Bangladesh has also maintained the same position.²⁶ Consequently, any deportation of declared foreigners is highly doubtful.

The Supreme Court's aversion to resolve some key legal questions has further intensified the threat of citizenship revocation. During the documentation process, the NRC administration decided not to apply birthright citizenship – right of every person born in India before 1 July 1987 to qualify as a citizen – in the case of Assam. It argued that Assam, by virtue of Section 6A of the Citizenship Act, was an exception and only those born in Assam before 25 March 1971 and their descendants would count as citizens. Consequently, thousands of people born between these two dates were excluded from the NRC enumeration despite meeting the legal definition of a citizen. Rather than legally assessing this overtly narrow – and rather implausible – reading of India's citizenship laws before the enumeration, the Court postponed deciding it. Now the excluded persons will remain in a state of uncertainty and at the risk of citizenship revocation until an authoritative judicial ruling.

In all likelihood, the eventual effect of the exclusion from the NRC may be the denial of the basic rights associated with citizenship like the right to vote, the freedom of movement and socioeconomic rights. Potentially, numerous individuals may also lose their citizenship status altogether, amounting to citizenship revocation.

While there is no official record of the ethnicity and religious identity of the persons excluded from the NRC, unofficial sources suggest that a sizable number include Bengali and non-Bengali Hindus.²⁷ Arguably in response to this, the Indian government sharpened its efforts to introduce an amendment to the Citizenship Act in order to make non-Muslims immune from citizenship revocation, and introduced the CAA in December 2019.²⁸

²⁴ Assam has also been claiming to expand the existing network of detention centres. Until now, six detention centres have been in operation. These centres are being operated from within jail compounds without any adequate facilities. Despite the extensiveness of the pleas by civil society in the last couple of years, the Court ultimately only passed a narrow order of limiting the detention, first to 3 years and more recently to 2 years. See *In Re: Contagion of COVID 19 Virus in Prisons* (2020) Suo Moto Writ Petition (C) No. 1/2020.

²⁵ The Hindu (2 March 2020), *NRC will not impact Bangladesh, Foreign Secretary Shringla tells Dhaka*. <https://www.thehindu.com/news/international/nrc-wont-have-implications-on-bangladesh-says-foreign-secretary-shringla/article30962241.ece>. (consulted 11 July 2020)

²⁶ NDTV (19 January 2020), *Citizenship Law Unnecessary But Is India's Internal Matter: Bangladesh PM*. <https://www.ndtv.com/india-news/bangladesh-prime-minister-sheikh-hasina-says-citizenship-amendment-act-nrc-were-not-necessary-but-is-2166346>. (consulted 11 July 2020). See also, Scroll (18 July 2019), *Bangladesh government expresses concerns over Assam's NRC process for first time*. <https://scroll.in/latest/930979/bangladesh-government-expresses-concerns-over-assams-nrc-process-for-first-time>. (consulted 11 July 2020)

²⁷ Sabrang India (17 September 2019), *Over 7 lakh Hindus among those excluded from the NRC, leaked data suggests*. <https://sabrangindia.in/article/over-7-lakh-hindus-among-those-excluded-nrc-leaked-data-suggests>. (consulted 24 June 2020)

²⁸ The Times of India (11 December 2019), *'Five lakh Bengali Hindu NRC rejects will get citizenship'*. <https://timesofindia.indiatimes.com/india/five-lakh-bengali-hindu-nrc-rejects-will-get-citizenship/articleshow/72465093.cms>. (consulted 24 June 2020)

Citizenship Amendment Act 2019 and the National Register of Indian Citizens

The Indian state introduced the CAA 2019 as a mechanism to narrow down the scope of citizenship denial under the citizenship amendments that we discussed in Section II and citizenship revocation in Assam as discussed in Section III. As we show in this section, it was a culmination of a series of policies seeking to render immune Hindu and other non-Muslim undocumented immigrants. While the government has asserted that it only grants citizenship, the CAA in fact keeps the citizenship denial framework intact with Muslim undocumented immigrants as its main victims.

Substance of CAA 2019

The CAA redefines the category of ‘illegal migrants’ under the Citizenship Act to exclude any Hindu, Sikh, Buddhist, Jain, Parsi or Christian from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31 December 2014.²⁹ In other words, it carves out an exception for the specified non-Muslim communities and grants them immunity from the existing citizenship denial regime. The CAA also creates an accelerated naturalisation procedure for them. They would be eligible for naturalisation after residing in India for five years as compared to the eleven years for other groups.³⁰ It also permits members of the specified communities to avail citizenship retroactively from the date of the entry into India. Thus by implication, it restricts citizenship denial flowing from the previous amendments and the threat of citizenship revocation only to Muslim undocumented immigrants and their children.

The Indian government has claimed that the CAA is purely for granting citizenship to the specified groups, and does not deny citizenship to any Indian resident. But this underplays the fact that the CAA is only a partial redressal of the citizenship denial regime. The undocumented immigrants not covered under the CAA continue to remain ‘illegal migrants’ facing denial of citizenship.

Apart from being a partial redressal of existing citizenship denial, the CAA is also discriminatory. The CAA explicitly introduces discrimination based on religion into the otherwise secular Indian citizenship regime. The government has argued that the amendment is based on the concern for minorities facing religious persecution in India’s neighbourhood. But it has provided no justification for excluding Muslim minorities like Ahmadis and Hazaras who continue to face religious persecution in India’s neighbouring countries. The law also excludes communities who face persecution – based on religion and other grounds – in China, Sri Lanka, Myanmar and other neighbouring countries. This has led many commentators to argue that the CAA violates the Indian Constitution’s requirement of non-arbitrariness and non-discrimination.³¹ They have also argued that the CAA goes against the fundamental secular ethos and pluralistic foundations of the Constitution.³²

The CAA is in fact the culmination of a number of previous policies that sought to carve out non-Muslims from the legally mandated citizenship denial.³³ The BJP government in 2004 created favourable provisions for “minority Hindus with Pakistan citizenship”, thereby carving out the first

²⁹ The Citizenship (Amendment) Act 2019, clause 2.

³⁰ The Citizenship (Amendment) Act 2019, clause 6.

³¹ Bhat, M. M. A. (2019), ‘The Constitutional Case against the Citizenship Amendment Bill’, *Economic and Political Weekly* 54(30): 12. See also, Ahmed, F. (2020), ‘Arbitrariness, subordination and unequal citizenship’, *Indian Law Review* 1-17.

³² Jayal, N. (2017), *The 2016 Citizenship Amendment Bill consolidates a trend towards a majoritarian and exclusionary concept of Indian citizenship*. <https://caravanmagazine.in/vantage/2016-citizenship-amendment-bill-majoritarian-exclusionary>. (consulted 24 June 2020)

³³ The existing regime on citizenship consists of interactions among several statutes. These statutes also have a string of orders and rules that govern their application. See, The Citizenship Act, 1955, the Foreigners Act, 1946, the Passport (Entry into India) Act, 1920, and the Registration of Foreigners Act, 1939.

exception in the citizenship denial regime.³⁴ As soon as the BJP came back to power in 2014, it concretised these exceptions for non-Muslim migrants in several steps. It amended the immigration rules in 2015 and 2016 to exempt undocumented non-Muslim migrants from India's neighbouring countries who had faced religious persecution. Consequently, anyone from these communities entering India without valid documents did not face any penal consequences.³⁵ In 2018, the government regularised the entry and stay of persons belonging to these communities by granting them long term visas on the ground that they seek to permanently settle in India.³⁶ Muslim undocumented immigrants remained excluded from this regime. The CAA 2019 incorporates these changes into the country's citizenship law, formalising citizenship denial only for Muslim undocumented immigrants and their children.

Implications of the CAA

The Indian government has argued that the CAA will not lead to citizenship revocation. This overlooks the fact that the parallel processes of the NRIC and the National Population Register ('the NPR'), along with the CAA threaten citizenship revocation that makes Muslims disproportionately vulnerable.

The 2003 amendment to the Citizenship Act empowered the government to create the NRIC as an enumeration of all the citizens in the country.³⁷ Under the rules,³⁸ the government is first meant to create the NPR to record all the residents in the country. It is subsequently meant to enumerate them as citizens or otherwise based on the documentary evidence they provide. The NRIC thus is an Assam-NRC extended to the national level.

The government has framed the NRIC as a citizenship determination exercise that will filter out foreigners. But the lack of access to government documents heightens the vulnerability of the socially disadvantaged communities as seen in Assam. The mechanics of the NRIC raise concerns that the local government officers tasked with implementing it may perceive Muslims as foreigners and subject their documentary evidence to wider scrutiny. Consequently, some commentators have argued that the NRIC might have even graver consequences than Assam's NRC since the determination of citizenship is left to the unguided discretion of local executive authorities.³⁹

This problem is further heightened by the fact that prominent state officials have publicly associated the NRIC and the CAA. In fact, Union Home Minister Amit Shah has consistently linked the two in his political speeches.⁴⁰ He was reported to have said that these policies will be implemented to identify and

³⁴ The Gazette of India (28 February 2004), *Notification*. http://egazette.nic.in/WriteReadData/2004/E_110_2011_028.pdf. (consulted 12 July 2020)

³⁵ The Gazette of India (7 September 2015), *Notification*. <http://egazette.nic.in/WriteReadData/2015/165755.pdf>. (consulted 26 June 2020); The Gazette of India (18 July 2016), *Notification*. <http://egazette.nic.in/WriteReadData/2016/170822.pdf>. (consulted 26 June 2020)

³⁶ This mechanism allowed these communities among other things residency permits, access to education, employment entitlements and limited free movement. See, Ministry of Home Affairs, Government of India (2018), *Long Term Visas*. https://www.mha.gov.in/PDF_Other/AnnexVI_01022018.pdf. (consulted 22 June 2020)

³⁷ The Citizenship Act 1955, section 14A (2).

³⁸ Ministry of Home Affairs (10 December 2003), *Notification*. https://censusindia.gov.in/2011-Act&Rules/notifications/citizenship_rules2003.pdf. (consulted 21 June 2020)

³⁹ Mander, H. & M.A. Bhat (31 January 2020), *This land is mine*. <https://in.boell.org/en/2020/01/31/land-mine>. (consulted 26 June 2020)

⁴⁰ Twitter (1 May 2019), *Amit Shah*. <https://twitter.com/amitshah/status/1123581776415399937>. (consulted 21 June 2020). See also, Scroll (20 December 2019), *Who is linking Citizenship Act to NRC? Here are five times Amit Shah did so*. <https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so>. (consulted 21 June 2020)

deport ‘infiltrators’ and ‘termites’.⁴¹ There is a fear that this association – in the context of politically divisive speech – may encourage officials implementing the NRIC assume that Muslims are more likely to be foreigners.

Moreover, the non-Muslim individuals who end up being excluded from the NRIC will have the option, at least theoretically, to apply for citizenship under the CAA. But this route will be completely unavailable for Muslims. Thus, the CAA-NRIC mechanism makes Muslims disproportionately vulnerable to citizenship revocation.

Public response and legal challenges

Seven state assemblies passed resolutions against the CAA and called for its repeal as a discriminatory legislation.⁴² These and other states also passed resolutions against the implementation of the NPR.⁴³ The states of Kerala and Rajasthan have also joined the constitutional challenge before the Supreme Court.⁴⁴

More than 140 petitions have been filed before the Indian Supreme Court challenging the constitutional validity of the CAA primarily based on articles 14 and 21. The OHCHR also filed an intervening application listing numerous international human rights law grounds against the CAA.⁴⁵ The Supreme Court is yet to list the matter to be heard on merits.⁴⁶ The Court has repeatedly rejected any pleas to stop the implementation of the CAA while it examined the constitutional validity of the legislation. There is some disquiet about the attitude of the court. For instance, a prominent commentator has argued that an exclusive reliance on the court may be misplaced.⁴⁷

Meanwhile, one state government led by the BJP was reported to have identified around 32,000 persons that it claimed belonged to the persecuted minorities under the CAA.⁴⁸ Curiously, this was even before the central government passed rules for implementation of the legislation. There was also an incident of slum demolition in the city of Bengaluru on the false suspicion that illegal migrants were

⁴¹ Reuters (12 April 2019), *Amit Shah vows to throw illegal immigrants into Bay of Bengal*. <https://www.reuters.com/article/india-election-speech/amit-shah-vows-to-throw-illegal-immigrants-into-bay-of-bengal-idUSKCN1RO1YD>. (consulted 12 July 2020). See also, Firstpost (11 April 2019), *BJP will remove 'every single infiltrator' from India*. <https://www.firstpost.com/politics/bjp-will-remove-every-single-infiltrator-from-india-amit-shah-says-actually-in-telangana-ranga-reddy-promises-nrc-implementation-6429961.html>. (consulted 21 June 2020)

⁴² Rodrigues, V. (2020), ‘State Assembly Resolutions against the CAA’, *Economic and Political Weekly* 55(5). See also, The Times of India (6 February 2020), *Madhya Pradesh becomes sixth state to pass resolution against CAA*. <https://timesofindia.indiatimes.com/india/madhya-pradesh-becomes-sixth-state-to-pass-resolution-against-caa/articleshow/73972009.cms>. (consulted 24 June 2020)

⁴³ Scroll (13 March 2020), *Delhi: Resolution against NPR passed in Assembly, AAP claims it will harm majority community too*. <https://scroll.in/latest/956086/delhi-resolution-against-npr-moved-in-assembly-claims-it-will-harm-majority-community-too>. (consulted 22 June 2020)

⁴⁴ The Hindu (16 March 2020), *Rajasthan moves Supreme Court against CAA*. <https://www.thehindu.com/news/national/other-states/rajasthan-moves-supreme-court-against-caa/article31085031.ece>. (consulted 21 June 2020)

⁴⁵ Al Jazeera (5 March 2020), *India defends CAA after UN rights chief approaches Supreme Court*. <https://www.aljazeera.com/news/2020/03/india-defends-caa-rights-chief-approaches-supreme-court-200303114701274.html>. (consulted 9 July 2020)

⁴⁶ The hearings were scheduled to resume in mid-March but have been affected since by the Covid-19 pandemic.

⁴⁷ Indian Express (12 December 2019), *The morning after CAB: It will be a mistake to rely just on Supreme Court*. <https://indianexpress.com/article/opinion/columns/the-morning-after-citizenship-amendment-bill-6162497/>. (consulted 22 June 2020)

⁴⁸ Hindustan Times (14 January 2020), *Under CAA, 32,000 refugees identified in UP so far: Minister*. <https://www.hindustantimes.com/india-news/under-caa-32-000-refugees-identified-in-up-so-far-minister/story-bknltgbARFh4w4spSWAidK.html>. (consulted 23 June 2020)

residing there.⁴⁹ These events have further aggravated the concerns among the vulnerable communities about the impending policies. The fact that some states have already started establishing detention centres has not done any favours to the public opinion. The state government of Maharashtra assured that it would not build detention centres but it was directed by the central government to set up a temporary facility.⁵⁰ The state of Karnataka opened its first detention centre for ‘illegal migrants’ in December 2019.⁵¹ The High Court of Karnataka recently held that ‘illegal migrants’ on bail shall also be kept in the detention centre till further orders of the court or deportation.⁵²

There were widespread and spontaneous protests across the country against the CAA-NRIC. These were probably the largest protests of the kind in India since independence until the Covid-19 pandemic halted them for all practical purposes.⁵³ The civil society has also mobilised against the CAA-NRIC and led the discourse by educating and rallying people.⁵⁴ Assam also witnessed a large scale mobilisation against the CAA. Assam-based protestors saw in the CAA the nullification of the Assam Accord. They have expressed a growing distrust with the new citizenship law since they consider it antithetical to the preservation of their linguistic, ethnic and cultural identity.⁵⁵ Since April 2020, several young anti-CAA protest leaders inside and outside Assam have been detained under stringent laws.⁵⁶

Conclusion

We have argued that despite the state’s framing of the CAA as purely a policy of granting citizenship, it entrenches and aggravates citizenship denial under the existing Indian law. Operating simultaneously with Assam’s NRC and the proposed NRIC, it threatens citizenship revocation for vulnerable groups, especially Muslims. This arbitrary and discriminatory system threatens to subject innumerable people to arcane legal procedures that will compromise the security of citizenship status.

From the standpoint of the Indian Constitution, these developments radically diverge from inclusive and secular grounds of citizenship. Moreover, the absence of any progressive refugee policy, or laws securing the rights and entitlements of undocumented immigrants endanger the social and economic well-being of those vulnerable to these procedures.

The public justifications and characterisation of these procedures in India resonate with the national security rhetoric often invoked in the West for denationalisation. Racial, ethnic and religious minorities

⁴⁹ India Today (19 January 2020), *Bengaluru Police demolishes makeshift houses of migrants as CAA-NRC debate rages on*. <https://www.indiatoday.in/india/story/bengaluru-police-demolishes-makeshift-houses-of-migrants-as-cao-nrc-debate-rages-on-1638322-2020-01-19>. (consulted 22 June 2020)

⁵⁰ The New Indian Express (5 March 2020), *No detention centre coming up in Maharashtra: Minister Anil Deshmukh*. <https://www.newindianexpress.com/nation/2020/mar/05/no-detention-centre-coming-up-in-maharashtra-minister-anil-deshmukh-2112750.html>. (consulted 22 June 2020)

⁵¹ The Times of India (24 December 2019), *Karnataka opens its first detention centre for illegal immigrants*. <https://timesofindia.indiatimes.com/city/bengaluru/karnataka-opens-its-1st-detention-centre-for-illegal-immigrants/articleshow/72946908.cms>. (consulted 22 June 2020)

⁵² LiveLaw (7 June 2020), *Keep Illegal Migrants In Foreigners Detention Centres Even After Grant Of Bail: Karnataka HC Issues Guidelines [Read Order]*. <https://www.livelaw.in/top-stories/keep-illegal-migrants-in-foreigners-detention-centres-even-after-grant-of-bail-karnataka-hc-157961>. (consulted 23 June 2020)

⁵³ BBC (24 March 2020), *Shaheen Bagh: Coronavirus clears long-running India citizenship protest*. <https://www.bbc.com/news/world-asia-india-52015464>. (consulted 22 June 2020)

⁵⁴ The Wire (31 December 2019), *Civil Society, Political Groups Come Together to Protest Against CAA*. <https://thewire.in/rights/civil-society-political-groups-come-together-to-protest-against-cao>. (consulted 22 June 2020)

⁵⁵ Sarma, C.K. & O. B. Hazarika (2020), ‘Anti-CAA Protests and State Response in Assam: Identity Issues Challenge Hindutva-based Politics’, *EPW Engage* 14(55).

⁵⁶ Scroll (30 May 2020), *Delhi violence: Pinjra Tod member Natasha Narwal booked under UAPA*. <https://scroll.in/latest/963353/delhi-violence-pinjra-tod-member-natasha-narwal-booked-under-uapa>. (consulted 23 June 2020)

including Muslims are especially vulnerable to citizenship revocation in the West. The Indian context, which although seems similar, is exceedingly worse due to *en masse* operation of revocation processes along with lack of institutional independence, arbitrary official discretion and disregard for the rule of law. The uncertainty of citizenship status and the serious threat of citizenship revocation haunts the future of millions of vulnerable Indians. The categories of exclusion in the citizenship regime may lead to mass statelessness in India.

Stolen citizenship*

Laura van Waas*

Introduction

Exploring the relations of citizens to the state has been poignantly described by historian Linda Kerber as the study of “the largest questions of democracy”.¹ In focusing on the *revocation* of citizenship, this Symposium cuts right to the deepest, darkest and most difficult of these questions. Indeed, if we understand citizens to be “the source of legitimate authority of democratic governments, then such governments should not have the power to redraw the boundaries of the citizenry through denationalisation”.²

Yet, the case studies in this symposium demonstrate that denationalisation has historically been, and continues today to be, deployed precisely for the purpose of redrawing the boundaries of the citizenry. Citizenship revocation is, in fact, instrumentalised to deny the identity, status and rights of individuals or groups who are deemed somehow threatening to, or incompatible with, the political community of the state as it is imagined by those who wield power. This contribution places the case studies in context by situating them against wider global trends in denationalisation and then offering some reflections on the mechanics of citizenship revocation that are brought to the fore in the case studies and are common also to situations beyond them.

A Decade of Denationalisation

In the June 2020 edition of its annual ‘Global Trends’ report on forced displacement, the United Nations High Commissioner for Refugees (UNHCR) included a special section reflecting on *A Decade of Displacement*.³ It sets out that from 2010 to 2019, at least 100 million people were forced to flee their homes and only a fraction of these “found a solution”. A worrying picture, leading High Commissioner Filippo Grandi to reflect that “we are witnessing a changed reality in that forced displacement nowadays is not only vastly more widespread but is simply no longer a short-term and temporary phenomenon”.⁴

UNHCR provides an annual update on statelessness in the same Global Trends report. However, in the section reflecting on the period of 2010 – 2019, the only information given on statelessness is that 754,500 stateless people obtained or confirmed a nationality over the course of the decade. This number is not set in context, making it difficult to evaluate the level of progress this equates to. Meanwhile, in the report chapter dedicated to statelessness, the narrative concentrates on the state of *data on* statelessness globally, rather than the state of the issue itself.

* The title for this piece takes its inspiration from the words of Nay San Lwin, a Rohingya activist, who describes the deliberate production of Rohingya statelessness with the words “Our citizenship has been stolen from us”. As cited in Briefing Paper (2020) ‘Human Rights and Covid-19: What now for the Rohingya’, available at https://files.institutesi.org/Covid19_The_Rohingya_Briefing_Paper.pdf (accessed 3 November 2020).

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¹ Reflecting on her “Life of Learning”, Kerber remarked that much of her own writing life was spent on these questions. Kerber, L. (2020), Charles Homer Haskins Prize Lecture, American Council of Learned Societies, Iowa, 28 October 2020.

² Birnie, R. & Bauböck, R. (2020), ‘Introduction: expulsion and citizenship in the 21st century’, *Citizenship Studies* 24(3): 271.

³ UNHCR (2020), ‘Global Trends: Forced displacement in 2019’, available at <https://www.unhcr.org/5ee200e37.pdf> (accessed 3 November 2020).

⁴ UNHCR (2020), ‘1 per cent of humanity is displaced: UNHCR Global Trends Report’, available at <https://www.unhcr.org/neu/38233-1-per-cent-of-humanity-displaced-unhcr-global-trends-report.html> (accessed 3 November 2020).

While reliable statistics on statelessness are indeed difficult to come by,⁵ this challenge pales in comparison to that of promoting and protecting the right to a nationality today. Indeed, had the wider picture of statelessness from 2010 to 2019 been presented, it could have carried the headline *A Decade of Denationalisation* and the comment that only a fraction of people affected found a solution is equally applicable to the stateless as it is to displaced populations. At least 15 million people are stateless globally.⁶ Moreover, even though three-quarters of a million people confirmed or acquired a nationality during the last decade, at least as many were newly stateless due to intergenerational statelessness and emerging situations of denial and deprivation of nationality.

This *Decade of Denationalisation* reached its crescendo on the 31st of August 2019, when 1.9 million people in Assam, India, were brought to the brink of statelessness because they were excluded from the updated National Register of Citizens (NRC), as discussed in the Symposium contribution by M. Mohsin Alam Bhat and Aashish Yavad. The citizenship crisis that this generated, aggravated by the subsequent passing of the widely criticised Citizenship Amendment Act, is now melding with the socio-economic and health crisis precipitated by the global pandemic, placing those affected by the NRC process in a situation of extreme vulnerability – as is also the case for many stateless populations globally.⁷

While Assam was the site of the biggest mass-disenfranchisement of the 21st century to date,⁸ it was not the only case of large-scale denationalisation in the last decade. Six years earlier, on the 23rd of September 2013, the Constitutional Court in the Dominican Republic passed a judgement that applied a narrowing interpretation of who qualifies for Dominican citizenship at birth *retroactively* all the way back to 1929.⁹ Tens of thousands of Dominicans of Haitian descent lost their nationality overnight in what some commentators described as a “civil genocide”. Following widespread international condemnation, a system for reviewing and remedying the status of those affected was put in place. However, it is (deliberately) complex and bureaucratic, and the vast majority of people are still waiting.¹⁰

Back in Asia, what many worried could ultimately become the plight of the Rohingya came to pass in 2017, as this long-persecuted community was subjected to acts of genocide.¹¹ The deprivation and denial of nationality of the Rohingya has a longer history, as discussed in the Symposium contribution by Jasmine Burnley, but this latest devastating chapter in their treatment reminds us of the far-reaching impact that denationalisation can have – a lesson we already learnt many decades ago when the tactic of stripping citizenship as a precursor to committing atrocities was deployed by Nazi Germany.

While developments in Assam, the Dominican Republic and in respect of the Rohingya may be the most visible markers of this *Decade of Denationalisation*, there are other situations too where citizenship

⁵ Chen, L., Nahmias, P. & Steinmuller, S. (2019) ‘UNHCR Statistical Reporting on Statelessness’, UNHCR Statistical Technical Series: 2019/1, available at <https://www.unhcr.org/5d9e182e7.pdf> (accessed 3 November 2020).

⁶ Institute on Statelessness and Inclusion (2020) ‘Statelessness in numbers: 2020. An overview and analysis of global statistics’, available at https://files.institutesi.org/ISI_statistics_analysis_2020.pdf (accessed 3 November 2020).

⁷ Institute on Statelessness and Inclusion (2020) ‘Stateless in a global pandemic’, available at https://files.institutesi.org/Covid19_Stateless_Impact_Report.pdf (accessed 3 November 2020).

⁸ Joint Statement: 125 Civil Society Organisations condemn the exclusion of 1.9 million people from the Assam NRC and call for urgent action to protect everyone’s right to a nationality, 5 September 2019, available at <https://files.institutesi.org/cso-joint-statement-on-assam-nrc.pdf> (accessed 3 November 2020).

⁹ Inter-American Commission on Human Rights (2015) ‘Report on the Situation of Human Rights in the Dominican Republic’, available at <http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf> (accessed 3 November 2020).

¹⁰ Belique, A., Oguisten, A., Lorac, E. & Pelletier, P. (2020) ‘Why we continue to fight for our right to nationality in the Dominican Republic and how you can help: An activists perspective’ in Institute on Statelessness and Inclusion, *The World’s Stateless. Deprivation of Nationality*, 177-184.

¹¹ See, among others, the reports of the Independent International Fact-Finding Mission on Myanmar, available at <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/Index.aspx> (accessed 3 November 2020).

has come under threat. For example, the secession of South Sudan left many at risk of statelessness,¹² while the denationalisation “Task Force” set up in the United States¹³ and the questioning of the status of “Windrush generation” in the United Kingdom¹⁴ have heralded problems for minority groups in those countries.

Even as compared to other times in history when (mass) deprivation of nationality was also witnessed, such as in Syria in 1962 as set out in the Symposium contribution by Muhamad Alh,¹⁵ the decade 2010 – 2019 stands out because it is further characterised by a renaissance of individualised denationalisation. Journalists, political opponents and human rights defenders have been targeted, such as in Bahrain where citizenship stripping has been heavily instrumentalised since 2012 on the pretext of protecting national security.¹⁶ The increasing securitisation of citizenship policy is also evident in the Symposium contribution by MaryAnne Iwara, which describes the difficulties in accessing proof of citizenship status that have been encountered by returnees from abduction by Boko Haram in Nigeria. Denationalisation has also been adopted as an explicit counter-terrorism strategy, with at least fifteen countries amending their legislation over the course of the decade to expand executive or judiciary powers to deprive a citizen of their nationality as a national security measure.¹⁷

Studying the mechanics of citizenship revocation

A central thread across the case studies in this Symposium, and evident in other situations of denationalisation beyond these, is the manner in which citizenship revocation is enabled and achieved through a trinity of *law*, *bureaucracy* and *rhetoric*. In all four of the country situations presented, the authors point to some form of legal basis that either paved the way for or consolidated the redrawing of the boundaries of the citizenry, to the exclusion of certain groups: the 1960 Citizenship law of Nigeria that invokes the notion of “indigenous communities” with lasting implications on who is treated as a citizen through the system of certificates of indigeneity, the 1962 Legislative Decree issued in Syria that provided the foundation for the exceptional census of the same year that catalysed the “Arabisation” of the Jazira region, the multiple citizenship law amendments in India through which a shift towards a more exclusive an ethnic conception of citizenship has been achieved, and the notorious 1982 Citizenship Law of Myanmar which redefined citizenship to the exclusion of anyone not belonging to official national ethnicities (*taingyintha*).

In each of the case studies, the role attributed to bureaucracy in the process of casting out citizens stands out arguably more starkly than that of the legal frameworks themselves. Whether framed as “citizenship determination procedures” as in the case of Assam in India, as a “population census” as in the case of the Kurds of North East Syria or as a documentation project to “update” the system of identity cards as in the case of the Rohingya, the authors of the case studies show that such exercises are neither benignly administrative nor executed in a manner that accords with due process. The odds were stacked

¹² UNHCR (2017) ‘A study of statelessness in South Sudan’, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/63857.pdf> (accessed 3 November 2020).

¹³ Open Society Justice Initiative (2019) ‘Unmaking Americas. Insecure citizenship in the United States’, available at <https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcf37f/unmaking-americans-insecure-citizenship-in-the-united-states-report-20190916.pdf> (accessed 3 November 2020).

¹⁴ Wray, H. (2018) ‘The ‘Windrush Generation’ and Citizenship’, Globalcit Blog, available at <https://globalcit.eu/the-windrush-generation-and-citizenship/> (accessed 3 November 2020).

¹⁵ Other examples include several situations of mass denationalisation occurred during the 1980s: Feili Kurds in Iraq, Black Mauritians in Mauritania and Lhotshampas in Bhutan.

¹⁶ See for an overview of cases the civil society initiative *I am Bahraini*, available at <https://www.anabahraini.org/> (accessed 3 November 2020).

¹⁷ Institute on Statelessness and Inclusion (2020) ‘The World’s Stateless: Deprivation of nationality’, available at https://files.institutesi.org/WORLD's_STATELESS_2020.pdf (accessed 3 November 2020).

deliberately against the groups that had already been marked for exclusion, including by placing the burden of proof on individuals who “predictably” lacked the documentation required to prove their entitlement to citizenship. The scope for arbitrary decision-making and corruption was increased by the devolution to local government officials of decision-making authority (Syria) or the power to determine “indigeneity” (Nigeria) and of appeals proceedings to Foreigners Tribunals that treat as suspicious any claims in which even minor – e.g. spelling – errors arise (India).

As the authors note, in none of the case studies included in this Symposium are formal citizenship deprivation procedures invoked. Instead, the criteria for citizenship are narrowed (in formulation or interpretation) and this is accompanied by what Burnley describes as an “opaque and processual” denationalisation, that unfolds through administrative practice. The third integral component of the mechanics of citizenship revocation is the rhetoric that facilitates and provides the justification for these other two linked developments. Who is worthy of citizenship, who belongs, comes to be linked to narrative constructs invoking indigeneity, ethnicity or religion. As shown in several of the case studies, those targeted for exclusion are re-imagined and branded as “aliens” or even “infiltrators”, who the state can and must uncover in order to legitimately correct their citizenship status accordingly.

When these three constituent parts of the mechanics of denationalisation are unpacked – law, bureaucracy and rhetoric – then the measure itself comes into full view, as one that is used to deliberately target individuals or groups who have already been marked as not-fully-belonging. The parallels between the Symposium’s case studies and other situations, from other geographies and other moments in time, then also become easier to trace. So much of what has been identified in here in terms of the role of the law, of bureaucracy and of supporting narratives in enabling citizenship revocation in the case studies is also true, for instance, of the mass denationalisation of Dominicans of Haitian descent in the Dominican Republic¹⁸ or of the Lhotshampas in Bhutan.¹⁹

Importantly, this analytical lens challenges the often-assumed dichotomy between “non-Western” examples of denationalisation and the resurgence of citizenship stripping in the “West” as a counter-terrorism. Burnley remarks, for example, that the Rohingya experience denationalisation “as an ongoing process rather than a distinct act, the latter of which characterises much of the citizenship revocation in richer countries”, before calling for investment in further comparative research of policies *in the global south*. However, the abundant scholarship that breaks down the targeting of terrorist suspects or ‘Foreign Fighters’ for denationalisation actually reveals a process that has many commonalities with the contributions to this Symposium.²⁰ As Tendayi Achiume puts it, “in the context of counter-terrorism law and policy, where there are measures that strip people of nationality, ostensibly on national security grounds [these] nonetheless have racially, ethnically or religiously specified targets, that are also being identified in other discourses as threats to the nation”.²¹ The legislative changes that have brought in new or expanded powers to deprive citizens of their nationality as part of states’ counter-terrorism policy

¹⁸ For more on the parallels between the situation in the Dominican Republic and that in Myanmar and in India, see Arraiza, M., Sharikova, M. & Aye, P. (2020) ‘Statelessness motivated by nativism, racism and xenophobia: A comparison of Myanmar, the Dominican Republic and India’ in Institute on Statelessness and Inclusion, *The World’s Stateless. Deprivation of Nationality*, 163-175.

¹⁹ Hutt, M. (2003) ‘Unbecoming Citizens. Culture, Nationhood, and the Flight of Refugees from Bhutan’, Oxford University Press.

²⁰ See, for instance, Macklin, A. (2014) ‘Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien’, *Queen’s LJ* 40(1): 1-54; Van Waas, L. and Jaghai, S. (2018) ‘All Citizens are Created Equal, but Some are More Equal Than Others’, *Netherlands International Law Review* 65: 413-430; and Gibney, M. (2020) ‘Denationalisation and discrimination’, *Journal of Ethical and Migration Studies* 46(12): 2551-2568.

²¹ Interview with Tendayi Achiume, UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance in Institute on Statelessness and Inclusion (2020) ‘The World’s Stateless. Deprivation of Nationality’, p. 155.

have, in fact, been enabled by an already-potent rhetoric stigmatising “suspect communities”,²² while the practical use of this measure has also been accompanied and facilitated by bureaucratic manipulation, for instance in the form of the weakening of procedural safeguards.

Conclusion

The *Decade of Denationalisation*, in light of which the case studies presented in this Symposium can be contextualised, has prompted serious concern as to the immediate and long-term effects in terms of the deterioration of the institution of citizenship. The shift towards a rhetoric of citizenship as “privilege” has a potentially normalising effect on the understanding of nationality as contingent, which threatens to further undercut efforts to promote and protect nationality as a fundamental human right. Scholarship is playing a crucial role in unpacking the drivers and mechanics of citizenship revocation and problematises its use. Civil society groups have meanwhile launched a *Year of Action Against Citizenship Stripping* in 2020, to promote adherence to the longstanding and strong international law framework which obligates States to respect, protect, promote and fulfil everyone’s right to a nationality.²³ As this work evolves, it is essential to enrich the study of denationalisation with further analytical and empirical work from the global south, such as this Symposium, in order to “overcome the current Western-centrism of the debate”.²⁴ However, this must be achieved without treating such contexts as distinct or exceptional, as they relate to the manifestation of citizenship revocation in the “West”. Scholarship will be most effectively enriched, together with our understanding of the means and mechanisms by which citizenship is stolen from people, if there is a genuine dialogue that is open to the existence of more commonalities than may first meet the eye.

²² Choudhury T (2017) ‘The radicalization of citizenship deprivation’, *Critical Social Policy* 37: 227. See also UN Human Rights Council (2018) ‘Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’, A/HRC/38/52, available at <https://undocs.org/A/HRC/38/52> (accessed 3 November 2020).

²³ See for details, <https://www.institutesi.org/year-of-action> (accessed 3 November 2010). A key instrument developed to clarify and raise awareness of the relevant international norms is the *Principles on Deprivation of Nationality as a National Security Measure*, developed over a 30-month research and consultation period, with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas. The Principles have secured individual and institutional endorsements and together with the extensive accompanying Commentary provide much-needed guidance to litigators, policy makers, judges, advocates and researchers engaged with these issues around the world. See further <https://www.institutesi.org/year-of-action-resources/principles-on-deprivation-of-nationality>.

²⁴ Birnie, R. & Bauböck, R. (2020), ‘Introduction: expulsion and citizenship in the 21st century’, *Citizenship Studies* 24(3): 273.

Pathways to statelessness: Denationalisation and the denial of personhood

Milena Tripkovic*

What does being stateless really mean? Four case studies in this symposium which explore practices that lead to statelessness of distinct groups of citizens in India, Myanmar, Nigeria, and Syria provide an illuminating account of the varieties and processes of being denied the status of membership in a polity. Although geographically and temporally dispersed, the four cases show unique patterns and paint a similarly worrying picture of continuous attempts to deny either the status of citizenship or the rights associated with it to specific groups of citizens. Taken together, the cases demonstrate that statelessness should not be thought of only as a status that denotes a lack of citizen attachments to any state – as legally conceived¹ – but that we should also consider the dynamics which precede it and make it possible, as well as the conditions which a lack of this status makes possible.

This brief response has two objectives. First, I explore what the case studies (and some of my own reflections on European denationalisation policies) tell us about the processes which create various ‘shades’ of statelessness. Second, I propose that rather than thinking about these shades as distinct or mutually exclusive, they are better understood as placed along a continuum which allows us to trace how state policies almost inevitably become more stringent and exclusive over time, ultimately leading to a full removal of undesired groups of citizens from state territory. Statelessness consequently works to erase personhood, and far from demonstrating a lack of interest in the future of those who are denied citizenship, states intentionally and maliciously target distinct groups of citizens in order to reduce the level of protection accorded to them and increase their vulnerability, even post denationalisation. While statelessness is most correctly understood as a legal denial of citizenship and nationality, more subtle breaches of attachments to one’s state should be considered as pathways to statelessness, which therefore deserve our equal attention.

One of the best ways to capture and reflect on the ‘shades’ of statelessness is to consider how visible and perceivable the limitations to the status are, internally, externally, and globally. The categorisation below rests on a significant degree of generalisation: cases are complex and state policies often follow diverse trajectories in the case of different groups, but the distinction nevertheless captures different phases of and pathways to statelessness.

1. **Visible statelessness.** The best example of this category is the statelessness of the Rohingya subsequent to their expulsion from Myanmar. Following a decades-long process of increasing discrimination and human rights violations in this country, the denial of their citizenship has more recently taken a dramatic and explicit form in their expulsion from the territory (made possible by previous policies which have long denied them access to identification documents). Their non-belonging is made blatantly obvious to both the population of Myanmar and the whole world.
2. **Covert statelessness.** This category is exemplified by the treatment of Kurds in Syria, as well as religious ‘others’ (predominantly Muslims) in India. In Syria, while many Kurds have over the years been expunged from the territory, a predominant majority continues to live within the territory of the state, but without the status and with almost no rights. In India, particularly in the state of Assam, widespread denial of citizenship relates to ‘foreigners’ or ‘illegal migrants’ who have actually lived in the territory for a number of years, but their deportation similarly seems unlikely. Their non-belonging is thus visible from the inside (to those living in Syria and India), but is less visible from the outside.

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¹ United Nations (1954), *Convention relating to the status of stateless persons*, article 1.

3. **De facto statelessness.** The example of this category is the case of Nigeria (especially in the case of returnees abducted by the Boko Haram). Equal enjoyment of the status is significantly undermined at the local level through the application of indigeneity rules – and while the state formally considers them citizens, the exercise of power by the local government results in a denial of rights and entitlements. Such statelessness is not visible to the outside, but unlike in the previous case, on the inside it is visible more to local communities and less to the rest of the state.
4. **Invisible statelessness.** Policies of European countries (both those in the EU and outside),² follow a similarly worrying pattern: although in most countries (apart from Italy and the UK) prohibition of statelessness presents an obstacle to citizenship revocation, when countries denationalise, they fail to notice that many of those who have another citizenship have little or no use of it. Their other country of citizenship is often merely a country of their ancestry with which they have no active relationship, or there may be other reasons which prevent the person from living there (war, conflict, discrimination). Their statelessness is visible neither from the inside or outside (because they are formally not stateless), but their links with any polity are broken and they effectively become global non-citizens.

Statelessness is therefore merely a piece of a complex patchwork woven together by systematic denial of personhood to communities distinguishable by religion, race, ethnicity, sex, ancestry and other grounds. Pathways to statelessness illustrate different methods and manners of reaching the ultimate goal of elimination – symbolic, psychological or physical – of those who are perceived as not belonging. One cannot escape an alarming sense of similarity between many of the policies employed in countries under examination and Gregory Stanton's 'Ten stages of genocide'.³ Recognizing that genocide is not merely an event, but a process, allows us to perceive the stages that precede it: classification ('them and us'); symbolisation ('labelling' of those who do not belong); discrimination (denial of rights); dehumanisation (denial of humanity); organisation (prohibited acts against the group); polarisation (similarities are downplayed, differences emphasized); preparation; persecution; extermination; denial. While most of the cases currently seem to be far removed from the latter stages, the International Criminal Court has in November 2019 commenced investigation into the situation in Myanmar, citing possible perpetration of atrocity crimes, including genocide.⁴ Past policies of Myanmar resemble current policies in India, Nigeria and Syria: and it is not difficult to imagine how Myanmar's current situation may become the future of these countries. Therefore, pathways to statelessness can easily become pathways to serious breaches of human rights, and appreciating the relevance of such citizenship-restricting policies thus becomes essential in understanding their potential long-term effects.

A final point concerns the uses of statelessness: are countries simply content with the knowledge that they have stripped those who are undesirable of their status and show no interest in their further destinies, or is the creation of statelessness a tool to achieve some other, even more sinister goals? The above recognition of shades of statelessness, as well as the discussion of its place within a wider project of elimination of outsider groups seem to suggest that statelessness can be used to further other deplorable aims. The way in which this is carried out, however, differs and a distinction must be drawn between countries that allow their former citizens to remain in the territory of the state (statelessness visible from the 'inside') and those who expel their former citizens (statelessness visible from the 'outside'). In the first situation, as exemplified by particular practices employed in India, Nigeria, and Syria, statelessness serves to distinguish and separate stateless groups from the rest of the community, which works towards

² Tripkovic, M. (2021), 'Transcending the boundaries of punishment: On the nature of citizenship deprivation', *British Journal of Criminology* (forthcoming).

³ Genocide Watch (2020), *The ten stages of genocide*. <https://www.genocidewatch.com/tenstages> (consulted: November 23rd, 2020).

⁴ International Criminal Court (2019), Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, following judicial authorisation to commence an investigation into the Situation in Bangladesh/Myanmar. <https://www.icc-cpi.int/Pages/item.aspx?name=20191122-otp-statement-bangladesh-myanmar> (consulted November 23rd, 2020).

legitimising their future unequal treatment: they are not only *excluded*, but their exclusion is further *used* to deny them equal access to rights, welfare and other resources. In the second situation, as exemplified by Myanmar and various European countries, the aims are more subtle and therefore more difficult to observe: in both cases, the aim is to deny protection, increase vulnerability of the stateless population in the global sphere, and make their future citizen association with *any country* highly unlikely. Myanmar's expulsion policies that were carefully crafted to limit access to valid documents, have made the identification of the Rohingya and subsequent granting of the refugee status in Bangladesh and beyond extremely hard, which bears negative effects to their path to any citizenship in the future. Particular European citizenship revocation policies create invisible statelessness by exposing their former citizens to uncertain destinies (because their attachments, as explained above, to their other country of citizenship are weak). Even though European policies, unlike those explored in the case studies, target individuals rather than groups, the increasing number of countries that have recently introduced them and the rising number of cases will eventually create a substantive group of people without attachments to any existing state.

Many practices discussed in the case studies and in this comment do not align easily with the international legal definition of statelessness. Nevertheless, recognizing them as shades of statelessness and pathways to the status of full statelessness helps us identify the dynamics of exclusion, its aims, and outcomes. Statelessness, when understood in this wider sense, is more than a status, but a complex set of relations and interactions which impacts negatively one's personhood and future life opportunities.

Beyond the ‘West’: Understanding citizenship revocation in a global context

Émilien Fargues*

Introduction

Over the past 20 years, citizenship revocation has come back on the political agenda of so-called Western democratic states. Many of these states have either contemplated or adopted legislative changes to increase the power of the executive to take citizenship away from individuals on an array of legal grounds, from fraud in the naturalisation process to involvement in terror-related acts.¹ In some cases, governments have even made an unprecedented use of citizenship stripping, targeting tens of individuals with citizenship revocation orders.² This renewed political interest in citizenship revocation has not gone unnoticed in scholarship, sparking key discussions on the legal, historical, sociological and political issues that the revival of citizenship stripping raises.³

Recent developments in citizenship laws and practices across the world show that citizenship revocation – understood as the legal and bureaucratic mechanisms through which states make their own nationals lose the citizenship status that they formerly held – is far from limited to Western contexts.⁴ The case studies here invite us to reconsider the ‘current Western-centrism of the debate’ on citizenship revocation, and to reflect on the development of a global comparative perspective.⁵ In her commentary, Laura van Waas underlines the several interests that the extension of the comparative perspective to the so-called ‘Global South’ can have. She notably argues that a global focus can allow scholars to reconsider an often-assumed dichotomy between ‘West’ and ‘non-West’ in the field of social sciences and citizenship studies in particular.⁶ Following Van Waas, non-Western cases should not be treated as *a priori* ‘distinct or exceptional’. The identification and explanation of similarities and differences across contexts should be the results of empirically grounded research that this symposium seeks to contribute to developing.

Drawing on the case studies here, this piece seeks to pinpoint a number of similarities and differences that stem from the uses of citizenship revocation across contexts. It is certainly too early to draw conclusions on the various strategies that public authorities pursue when resorting to citizenship revocation and on the social and political consequences that this entails. More research thus needs to be done – not only in the Global South – on the laws and bureaucratic practices through which states take

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¹ For a recent overview in the European Union, see Lepoutre, J. (2020), *Citizenship Loss and Deprivation in the European Union* (27 + 1). Florence: EUI Working Paper RSCAS 2020/29.

² In the United Kingdom (UK), journalists reported that the number of citizenship revocations rose dramatically to 104 cases in 2017. See Dearden, L. (2019), ‘Shamima Begum: Number of people stripped of UK citizenship soars by 600% in a year’, *The Independent*, available at: <https://www.independent.co.uk/news/uk/home-news/shamima-begum-uk-citizenship-stripped-home-office-sajid-javid-a8788301.html> (accessed on 22/11/2020).

³ For an overview of those discussions, see two collections recently published: Birnie, R. & R. Bauböck (eds.) (2020), ‘The Power to Expel: Deportation and Denationalisation in Historical, Legal and Normative Perspective’, *Citizenship Studies*, 24(3), and Fargues, É., E. Winter & M. Gibney (eds.) (2020), *When States Take Rights Back. Citizenship Revocation and Its Discontents*. London: Routledge.

⁴ Citizenship revocation should not therefore be limited to the formal procedures that allow governments to take citizenship away from individuals on a limited number of legal grounds (disloyalty, fraud, involvement in terrorism, etc.). As several of the case studies of this symposium illustrate, citizenship revocation can also result from the redefinition of the rules of citizenship attribution or bureaucratic procedures of citizenship determination.

⁵ Birnie, R. & R. Bauböck (2020), ‘Introduction: expulsion and citizenship in the 21st century’, *Citizenship Studies* 24(3): 273.

⁶ On this dichotomy, see Chung, E. A. (2017), ‘Citizenship in Non-Western Contexts’, in A. Shachar, R. Bauböck, I. Bloemraad & M. P. Vink (eds.), *Oxford Handbook of Citizenship*, 433-453. Oxford: Oxford University Press.

citizenship away from their own nationals. Still, it is possible to identify three common patterns that emerge from the cases investigated in this symposium:

- (1) Citizenship revocation is presented and politically legitimised as a security measure.
- (2) Public justifications for citizenship revocation draw on 'thick' conceptions of national membership.
- (3) Measures of citizenship revocation threaten fundamental rights, particularly in contexts where procedural safeguards against arbitrary practices of public authorities are weak.

I shall comment on these three common patterns in turn and show that they further extend beyond the countries investigated in this symposium – including the Western countries on which comparative research on citizenship revocation has so far predominantly focused. The emphasis that I place on the commonalities across contexts does not overlook a number of divergences that emerge between cases, most notably when it comes to conceptions of national membership and levels of protection of fundamental rights. However, as I will explain, these divergences are better understood as the particular expressions of similar processes linked to the revival of citizenship revocation across different national settings (reaffirmation of 'thick' visions of national membership, weakening of procedural safeguards) than as manifestations of mechanisms limited to specific cases. Most importantly, such divergences do not allow us to draw a sharp divide between Western and non-Western contexts.

The legitimization of citizenship revocation as a security measure

Commenting on the case studies in this symposium, Laura van Waas interestingly points out that 'citizenship revocation is enabled and achieved through a trinity of *law, bureaucracy and rhetoric*'. One of the commonalities among the case studies relates to the 'rhetoric' dimension of citizenship revocation, more specifically to the justification that is most often given by public authorities. They present and legitimise citizenship revocation as a mechanism that serves to protect the state against an alleged threat to 'national security' or 'national unity'. In Syria, Mohamad Alh shows that the governmental justifications for the 1962 census, which resulted in the citizenship revocation of thousands of Kurds, were based on the necessity to identify 'alien infiltrators' and eliminate threats to Arab national unity. Similarly, in contemporary India, Mohsin Alam Bhat and Aashish Yadav explain that one of the ministers of the Modi government defended the recent introduction of both the 'National Register of Indian Citizens' (NRI) and 'Citizenship Amendment Act' (CAA) as measures aiming to deport 'infiltrators', officially compared to 'termites'. In Nigeria, as MaryAnne Iwara shows, when returning to their communities, women who have been abducted by Boko Haram are considered by family and community members as co-responsible for the secessionist and terrorist threats that the sect embodies. On that basis, they are being refused certificates of indigeneity and consequently denied the rights normally associated with Nigerian citizenship.

The invocation of a threat against national security or national unity and the defence of citizenship revocation as an appropriate means to combat this threat go well beyond the countries covered in this symposium. In Bahrain, it is in the name of national security that the government justifies citizenship stripping against political dissidents.⁷ Comparably, in the aftermath of the failed coup attempt that took place in 2017 in Turkey, a decree was published allowing the government to deprive of citizenship individuals who pose a threat to national security if they do not return to face trial.⁸ Furthermore, in the

⁷ Ibrahim, A. (2020), 'Activists condemn Bahrain's use of citizenship revocation', *Al Jazeera*, available at: <https://www.aljazeera.com/news/2020/11/12/bahrain-activists-condemn-citizenship-revocation-against-dissent> (accessed on 22/11/2020).

⁸ De Chickera, A. (2017), 'Turkish despair: The stripping of Turkish citizenship by the state', *European Network on Statelessness*, available at: <https://www.statelessness.eu/updates/blog/turkish-despair-stripping-turkish-citizenship-state> (accessed on 22/11/2020).

European Union, no fewer than eight member states have either amended or introduced legislation on citizenship revocation with the purpose of fighting against terrorism and protecting national security over the last decade.⁹

The defence of national security or national unity stands out as the most common motivation of new measures of citizenship revocation across contexts. However, it is important to acknowledge the varieties of threat that political leaders claim to contain when resorting to citizenship revocation. In the UK, ex-Home Secretary Savid Javid recently explained that this should not be restricted to terrorists but should extend to the ‘very worst criminals’ when justifying his decision to deprive of British citizenship three naturalised citizens convicted for a scandal of child sexual exploitation.¹⁰ Notwithstanding these varieties of threat, the measure tends to be systematically presented as a ‘potential solution to real or assumed societal ills’ and legitimised through a security discourse.¹¹

Citizenship revocation and the defence of ‘thick’ conceptions of national membership

Throughout these case studies as well as in other contexts where citizenship revocation has made a comeback on the political agenda, the identity dimension of citizenship emerges as a common object of securitisation. It is to protect what would allegedly bind the citizens of the same nation together that amendments to citizenship law are generally passed, and that some individuals and groups lose their citizenship status. More precisely, political leaders do not simply claim to protect the nation as a juridico-political order of rules and obligations that apply equally to all; they rather defend a conception of the nation that has moral, cultural and sometimes even ethnic connotations. In other words, the identity dimension of citizenship is not reduced to ‘thin and procedural forms’;¹² it is invested with ‘thick’ significations that vary from one context to another.

The analyses in the case studies provide evidence of the permanence and/or reaffirmation of an ethnic conception of national membership based on kinship and blood ties between members of the national community. As Laura van Waas underlines: ‘Who is worthy of citizenship, who belongs, comes to be linked to narrative constructs invoking indigeneity, ethnicity or religion’. In Nigeria for instance, as MaryAnne Iwara explains, the conception of national membership premised on ethnic classifications can be regarded as a legacy of colonial rule that was incorporated into nationality law at independence. In other national contexts, political leaders have also recently contributed to the reaffirmation of ethnically exclusive understandings of citizenship. In Myanmar, Jasmine Burnley shows that the citizenship revocation and contemporary persecution of the Rohingyas are inseparable from the promotion of ‘*taingyintha*’ or ‘national races’ as a constitutive feature of membership in the Burmese national community. In India, as Mohsin Alam Bhat and Aashish Yadav explain, the anti-Muslim rhetoric of the Bharatiya Janata Party (BJP) has played a key role in the introduction of the National Register of Citizens (NRC) in the state of Assam, with various party representatives agitating fears of demographic replacement of the Hindu population.

In Western countries, scholars have noted that the revival of citizenship revocation often operates through a republican/communitarian political discourse based on the defence of ‘shared values’ and

⁹ The list includes Austria, Bulgaria, Denmark, Finland, Germany, Italy, the Netherlands and the UK. See Lepoutre, J. (2020), *Citizenship Loss and Deprivation in the European Union* (27 + 1), *op. cit.*, 8-12.

¹⁰ Troy, D. (2020), ‘Governing Imperial Citizenship: A Historical Account of Citizenship Revocation’, in É. Fargues, E. Winter & M. J. Gibney (eds.), *When States Take Rights Back: Citizenship Revocation and Its Discontents*, 12. *Op. cit.*

¹¹ Fargues, É., & E. Winter (2020), ‘Conditional Membership: What Revocation Does to Citizenship’, in É. Fargues, E. Winter & M. J. Gibney (eds.), *When States Take Rights Back: Citizenship Revocation and Its Discontents*, 1. *Op. cit.*

¹² Joppke, C. (2010), ‘The Inevitable Lightning of Citizenship’, *European Journal of Sociology*, 51(1): 12.

'loyalty'.¹³ According to Janie Pélabay and Réjane Sénac, such a discourse induces a process of 'ethicisation of citizenship', consisting in the 'reaffirmation of the moral and cultural preconditions for the political community's survival'.¹⁴ Importantly, Pélabay and Sénac further explain that this process of ethicisation has not been dissociated from the exclusion of certain ethno-racial minorities who become suspects of not sharing the same values as the ones that 'loyal citizens' would cherish. This, then, points to a close correlation between the ethicisation of citizenship and its ethnicisation. The reaffirmation of morally and culturally 'thick' visions of national of membership becomes inseparable from the stigmatisation of certain ethno-racial minorities – Muslims emerging as a prime target – and the creation of hierarchies of a priori more or less loyal citizens.¹⁵

In the West, in contrast to the countries covered here, nationality laws do not premise citizenship on ethnicity or religion, but the stigmatisation of ethno-racial minorities nevertheless accompanies the revival of citizenship revocation. Hence, any opposition between Western and non-Western cases needs to be nuanced.

Protections against arbitrary practices of citizenship revocation

Another commonality characterises the very functioning of citizenship revocation in the case studies here. As Jasmine Burnley notes of the example of Myanmar, the citizenship revocation of the Rohingyas is not the result of an 'individual procedural act' as usually happens in contemporary Western countries. It emerges as a more 'gradual process conducted through both administrative practice and legal change'. Burnley's observation can be extended to the other cases. People are either effectively deprived of their citizenship, or put at risk of losing it, through a combination of bureaucratic decisions and/or legislative amendments rather than through formal individual procedures of citizenship revocation. Interestingly, such formal procedures exist in these countries, but are rarely used.

Contributors further shed light on the poor procedural safeguards that individuals enjoy when faced with citizenship revocation. They all point to the wide discretionary power of public authorities to issue or to check the documentation required to prove one's citizenship status, and to the risks of citizenship revocation and/or denial of the rights associated with citizenship that this generates. Clearly, the average low level of documentation of the population in the countries analysed is a common background against which arbitrary practices of citizenship determination occur, sometimes leading to citizenship revocation.

Moreover, when appeal procedures exist, claimants face difficulties in contesting the decisions taken by public authorities. In India, Mohsin Alam Bhat and Aashish Yadav explain that people excluded from the NRC in the state of Assam have the possibility of appealing before Foreigners Tribunals. However, the authors observe that those tribunals have 'deviated from standard rules of evidence and procedure at the cost of due process', as judges consider it perfectly legitimate to deny citizenship to individuals due to errors in the transcription of names and dates. Combined with the absence of recognition and/or implementation of international conventions constraining state action,¹⁶ the poor state of procedural

¹³ See Sykes, P. (2020), 'Denaturalisation and Conceptions of Citizenship in the 'War on Terror'', in É. Fargues, E. Winter & M. J. Gibney (eds.), *When States Take Rights Back: Citizenship Revocation and Its Discontents*, 62–76. *Op. cit.*; Irving, H. (2020), 'The Concept of Allegiance in Citizenship Law and Revocation: An Australian Study', in É. Fargues, E. Winter & M. J. Gibney (eds.), *When States Take Rights Back: Citizenship Revocation and Its Discontents*, 93–108. *Op. cit.*

¹⁴ Pélabay, J. & R. Sénac (2020), 'Citizenship revocation: a stress test for liberal democracy', in É. Fargues, E. Winter & M. J. Gibney (eds.), *When States Take Rights Back: Citizenship Revocation and Its Discontents*, *op. cit.*, 113.

¹⁵ See Winter, E., & I. Previsic (2020), 'The Politics of Un- Belonging: Lessons from Canada's Experiment with Citizenship Revocation', in É. Fargues, E. Winter & M. J. Gibney (eds.), *When States Take Rights Back: Citizenship Revocation and Its Discontents*, 44–61. *Op. cit.* See also Choudhury, T. (2017) 'The Radicalisation of Citizenship Deprivation', *Critical Social Policy*, 37(2): 225–244.

¹⁶ On this point, see Iseult Honohan's contribution to this symposium.

safeguards that the case studies overall indicate leaves people at risk of statelessness and gross human rights violations, as the genocide perpetrated against the Rohingyas in Myanmar sadly illustrates, and as fears grow in India with the construction of mass detention centres.

When citizenship revocation results from an individual procedural act based on a set of conditions defined by law (fraud, terrorism, etc.), as is most often the case in contemporary Western countries, the administration is sometimes forced to act within certain time limits and under the control of a court. This is notably the case in France, where the Minister of the Interior cannot make citizenship revocation orders past statutory time limits and without the approval of the Council of State. However, situations can vary significantly from one state to another. In the UK, for example, the British Home Office is not constrained by any time limits and does not need to obtain the approval of a court before issuing citizenship revocation orders.¹⁷ Keeping these variations in mind, we should be careful not to draw hasty conclusions that would present Western countries as paradigmatic examples of high levels of protection against arbitrary practices of citizenship revocation, and non-Western countries as prime instances of absence of control over such arbitrary practices. This is not to deny that, in Western states, judicial institutions protect a number of fundamental rights that limit the executive's power to revoke citizenship – most notably preventing statelessness – and that this is less obvious in the countries in this symposium. Going back to France, the Council of State systematically rejects the executive's decisions that would result in statelessness, even in cases of fraud-based citizenship revocation (where statelessness as a consequence of revocation is allowed by international law). This stands in stark contrast with the very loose control that the Indian Supreme Court has exercised over the implementation of the NRC in Assam, approving the arbitrary and discriminatory practices of the administration.

This being said, one should not treat these national differences as evidence of a more general Western vs. non-Western division, for two fundamental reasons. First, there are examples of Western countries having crossed previously established red lines protecting fundamental rights in order to expand the executive's power to revoke citizenship. Since the passing of the Immigration Act in 2014, the UK's Home Secretary is now able to take citizenship away from naturalised citizens who pose a threat to the 'public good' even though the decision may leave them stateless. Secondly, as scholars working on the implementation of citizenship revocation in Western cases have noted, governmental authorities often consider procedural safeguards as nothing more than obstacles in the exercise of their power,¹⁸ obstacles that they sometimes take the liberty to circumvent in practice.¹⁹

Conclusion

The case studies in this symposium allow us to identify a number of interesting convergences characterising the uses of citizenship revocation across time and space. In my contribution I have laid emphasis on three such convergences: (1) the legitimisation of citizenship revocation as a security measure, (2) the promotion of 'thick' conceptions of national membership and (3) the threat that citizenship revocation places on fundamental rights. I have suggested that these convergences are

¹⁷ This applies to citizenship revocation based not only on national security concerns but also on grounds of fraud. For a comparison between France and the UK on those aspects, see Fargues, É. (2017), 'The Revival of Citizenship Deprivation in France and the UK as an Instance of Citizenship Renationalisation', *Citizenship Studies* 21(8): 984– 998, and (2020) 'Simply a Matter of Compliance with the Rules? The Moralising and Responsibilising Function of Fraud- Based Citizenship Deprivation in France and the UK', in É. Fargues, E. Winter & M. J. Gibney (eds.), *When States Take Rights Back: Citizenship Revocation and Its Discontents*, 77-92. *Op. cit.*

¹⁸ Boeckstein, T. & G.-R. de Groot, 'Discussing the Human Rights Limits on Loss of Citizenship: A Normative- Legal Perspective on Egalitarian Arguments Regarding Dutch Nationality Laws Targeting Dutch- Moroccans', in É. Fargues, E. Winter & M. J. Gibney (eds.), *When States Take Rights Back: Citizenship Revocation and Its Discontents*, 26–43. *Op. cit.*

¹⁹ For examples of how the British and French governments manage to circumvent procedural safeguards in the exercise of citizenship revocation, see Fargues, É. (2017) 'The Revival of Citizenship Deprivation in France and the UK as an Instance of Citizenship Renationalisation', *op. cit.*

common not only to the countries covered here but also to other contexts in which citizenship revocation is making a comeback, including Western states. A number of divergences have also emerged between those cases and the ones analysed here. I have notably advanced that the public defence of an ethnic vision of national membership and the weakness of procedural safeguards against citizenship revocation distinguish the examples here from Western countries, but only to a certain extent. Indeed, those divergences can be seen as the particular expressions of similar processes that are perceptible across contexts. Moreover, those differences do not draw a sharp line between Western and non-Western cases, since the revival of citizenship revocation in Western states is not exempt from the stigmatisation of ethno-racial minorities whilst correlating with the weakening of procedural safeguards.

More research needs to be done on citizenship revocation in a global perspective to further investigate the convergences and divergences emerging across contexts. This symposium has taken a first step in this direction. One of the greatest challenges facing future endeavours will certainly lie in the collection of empirical materials. Governments often hide the number of people they target with citizenship revocation orders from the public eye, as well as the arbitrary practices of their administration. As this collection has shown, it is important that scholars, representatives of civil society organisations and journalists share and work together.

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